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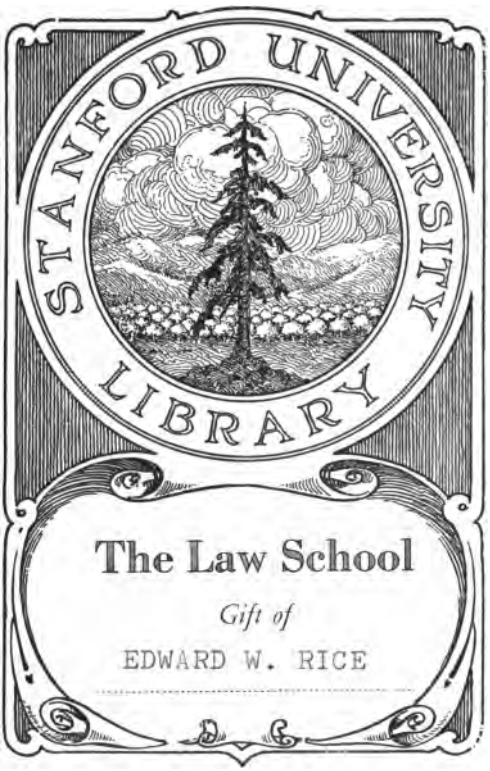

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OF DREGHORN.

IN TWO VOLUMES.

VOL. II.

Dreghorn, John Maclaurin.

THE

WORKS

OF THE LATE

JOHN MACLAURIN, Esq.

OF DREGHORN:

ONE OF THE SENATORS

OF THE COLLEGE OF JUSTICE,

AND

F. R. S. EDIN^R.

"Chaque homme ecrit ce qu'il pense dans ses meilleurs moments, & ras-
"semble à un certain age les reflections les plus epurées qu'il a eues pen-
"dant sa vie. Avant sa mort il en forme un livre plus ou moins gros,
"selon sa maniere de voir & de s'exprimer: ce livre est l'ame du de-
"funt.

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THOUGHTS

ON

VARIOUS SUBJECTS.

Of the Court of Seſſion.

I HAVE all along thought, the Court of Seſſion is not compoſed of too many Judges, but the Fifteen are not properly employed and diſtributed. This Court alone, does, in this country, the buſineſs that is done in England by the Common Pleas, King's Bench, Admiralty, Doctors' Commons, Chancery, and, I may ſay, Exchequer too; for there is a way in England of bringing into that Court cauſes that do not concern the Revenue; ſo that it is a miſtake that the Engliſh have fewer Judges than we. They have many more, for, into the computation muſt be taken, not only the Twelve Judges, but the Chancellor, the Maſter of the Rolls, fourteen Maſters in Chancery,

(who do a great deal of the buſineſs that is done in the Court of Seſſion by the Ordinaries,) and alſo the Judges who determine maritime and conſiſtorial cauſes. How many of theſe there are I do not know; but it is plain, that, in England, they have at leaſt thirty Judges for the buſineſs which, in this country, is done by fifteen. But they have not near ſo many Judges in any one court; they have not, I believe, above four in the King's Bench, Common Pleas, and Exchequer; whereas the Seſſion conſiſts of fifteen, and nine are neceſſary to make a quorum.

In that reſpect, I apprehend they are right and we wrong. Many of the cauſes that come before the Court of Seſſion are trifling, and attended with no difficulty; hence the aſſembling ſo many Judges every day is unneceſſary and improper, as one half of them might be ſpared, and better employed.

It has been propoſed, as we certainly have too much to do, to divide us into Inner and Outer-houſe Judges, and I think that plan not a bad one. I propoſed myſelf, ſome years ago, another which I thought rather better,

better, and which has this great advantage, that if it be found not to anſwer, the former method may be reſumed at pleaſure. This plan divided the fourteen ordinary Judges into two courts; the one to ſit two, the other three days of the week, with correſponding Ordinaries; the buſineſs to be apportioned between them as equally as poſſible, by giving each a certain ſet of cauſes, *e. g.* the one the ſuſpenſions, advocations, regulations, and the reductions; the other, the ordinary actions and cauſes that overleap the Outer-houſe.

Both theſe plans require, as would others which might be ſuggeſted, that all thoſe appointed Judges be men of abilities, both of body and mind, and, conſequently, that they be penſioned off when they fail in either.

I have now had near five years* experience as a Judge of the Court of Seſſion, and I am perfectly clear, that it ought to be divided into two at leaſt; and I have no doubt that ſooner or later this will be done, as I find it

* Written in 1792.

now reliſhed by many that were at firſt againſt it. In that way, juſtice would be adminiſtred with double diſpatch, Judges would not be oppreſſed, nor cauſes hung up long, as they frequently are, from the lawyers not being able to overtake all they undertake. Indeed there would be ſo much time as to enable us to determine a great many cauſes on hearings, and ſo ſave the great expence and delay occaſioned by writing and printing. Mr Dunning ſaid, that, in Scotland, a lawyer wrote all he ſpoke, and printed all he wrote; and this is literally true of every cauſe which runs the courſe of ordinary litigation. But what is ſtill more ſingular, abſurd, and oppreſſive, is, that all that has been written and printed, muſt be written over again in what is called the extract of the decree, which puts parties to an incredible and perfectly unneceſſary expence. In all caſes, therefore, a ſummary, or abbreviate of the procedure ought to ſuffice; and for the fees of this, in every proceſs that comes into Court, the clerks ought to be ſecured; and if the matter were put upon that footing, there is no doubt that the clerks would make more than they do at preſent; for, in a mul-

a multitude of caſes, no extract is ever taken. As to the argument, that ingroſſing the procedure ſhews the grounds on which the Court went, it is a mere pretence; the printed papers do that ſufficiently in the Houſe of Lords: theſe are always ſent to London, called for, and read by thoſe who determine the appeal. In this country, the proceſs itſelf can always be got; ſo that any perſon deſirous to ſee the arguments *hince inde*, may be ſatisfied for a ſhilling.

CON-

CONSIDERATIONS

ON THE QUESTION,

How a JUDGE, *whoſe Opinion has been over-ruled, ought to vote in ſubſequent and ſubordinate Queſtions?*

AND

How the Vote ought to be ſtated in a numerous Court?

PLINY, in one of his epiſtles*, ſtates the following caſe to have happened in the Roman Senate:—Afranius Dexter having been found killed in his bed, and it being uncertain whether he had been ſlain by himſelf, or by his ſlaves: and if by them, whether from malice, or by his own command; it was referred to the Senate to determine what judgement ought to be pronounced upon them. Some were for death, ſome for baniſhment, and ſome for acquittal, of which laſt claſs Pliny was one. That claſs being more numerous than any of the other two, though not ſo numerous as the two

* B. 8. Epiſt. 14.

two together; he inſiſted that the two ſhould not be allowed to join againſt the third, but that they ſhould be ſeparately counted; and, after a ſtruggle, this was agreed to, and the ſlaves acquitted. But the caſe being new, (which is very ſurpriſing,) he, in the epiſtle alluded to, deſires the opinion of his friend Arioſto upon it.

It ſhould ſeem that Pliny was in the wrong; as it happened his method was favourable to the merciful ſide; but it might have happened otherwiſe, *e. g.* If 21 had been for death, 20 for baniſhment, and 20 for acquittal, the lives of the ſlaves, according to his doctrine, were loſt; which moſt certainly they ought not to have been, there being 40 to 21 againſt death, and it being perfectly uncertain, till the queſtion be properly put, Whether they ought at all to be puniſhed?

In order to put the queſtion properly, the grounds of the opinions muſt be attended to. What theſe were, Pliny does not inform us; but it is plain, that thoſe who were for death, muſt have preſumed that the ſlaves

ſlaves had murdered their maſter; thoſe who were for baniſhment, muſt have held that they had not murdered him, but that they had killed him by his own command, and were culpable for ſo doing: thoſe who were for acquittal, muſt have held, that the ſlaves had killed him, but that they had done ſo by his own command, and that they were not culpable for doing ſo. The ſuppoſition that he had been killed by ſome other perſon is excluded by the ſtate of the caſe, and, I ſuppoſe, by the Senatus conſultum on which they were tried, which preſumes that the maſter has been killed by his ſlaves, ſo that the only defence pleadable is his own order.

If the queſtion in this caſe be put in general, What judgment ought to be pronounced? If there be 21 for death, 20 for baniſhment, and 20 for acquittal; according to Pliny, the lives are loſt; which is groſsly abſurd and unjuſt, for there are 40 to 21 againſt death. The firſt queſtion ought to be in this caſe, Are the ſlaves to be held guilty of murder or not? It will carry not by 40 to 21.

Then

Then the next queſtion is, Puniſhable or not? How this will carry is uncertain; for it being eſtabliſhed by the preceding determination that the ſlaves had not murdered their maſter, thoſe who vote for their death, on the contrary ſuppoſition, may think that they were not at all culpable for killing him by his own command, and on that ground join thoſe who are for acquittal.

If they do, acquittal carries by 41 to 20; but if they do not, and it carries Puniſhable, then the queſtion muſt be, What ſhall the puniſhment be?

In this queſtion, What ſhall the puniſhment be? it may be thought that thoſe who voted for acquittal ought not to vote at all. If they do not, I apprehend they do wrong, as the conſequence may be, to ſubject to a very heavy, inſtead of a ſlight puniſhment; for the 21, who were for death, divide; ſome of them voting for impriſonment, and ſome, or one of them, for baniſhment: if thoſe who were for acquittal ſtand off, it will carry for Baniſhment; whereas if they vote for the ſlighteſt puniſhment, that

carries. This, I apprehend, they ought to do. It may be ſaid, they cannot, with a ſafe conſcience, as their opinion is againſt any puniſhment: but this is not ſolid; they vote for puniſhment upon compulſion, and a new ſtate of the caſe: they ought to do juſtice as much as they poſſibly can, that is, be for the leaſt puniſhment, as that comes neareſt to what they think complete juſtice; and if they do not do ſo, they commit very great injuſtice: as it is owing to their ſtanding off that baniſhment is inflicted in place of impriſonment.

Aulus Gellius, and Quintilian, Declam. 365, ſtate an imaginary caſe as a rhetorical exerciſe: What is to be done if, of ſeven judges, two be for baniſhment, two for a fine, and three for death. If it has been previouſly fixed that the perſon accuſed is guilty, and muſt ſuffer ſome puniſhment, the queſtion may be put in general, What ſhall that be? but then all the votes for a leſſer puniſhment than death, though they differ as to the degree, muſt be accumulated againſt thoſe for death. In the caſe ſtated by Gellius, there are four to three againſt death.

If,

If, however, there be a poſſibility of thoſe for death, on their opinions being over-ruled, voting for the leaſt puniſhment, there ought to be another queſtion; if there be not, it follows from their opinion, that, *a fortiori*, they muſt be for baniſhment, and that muſt be the puniſhment.

It ſhould ſeem that a Judge ought to vote againſt his opinion in certain caſes. I gave one inſtance under Pliny's caſe; another may be given here. Thoſe who vote for death, though over-ruled, ought not to ſtand off in the ſecond queſtion, unleſs their opinion be, that, if not guilty of a capital crime he is not guilty at all; they ought, on the ſecond queſtion, to vote for the next ſevereſt puniſhment, that is baniſhment, being over-ruled as to death: they cannot do what they think complete juſtice, but they ought to do as much juſtice as they can; for the ſame reaſon, that thoſe who voted Acquit, if over-ruled, ought to vote for the mildeſt puniſhment.

In Pliny's caſe, the queſtion was improperly put, What judgment ſhall be pronoun-

ced? for it does not make way for all the opinions. If 21 for death, 20 for baniſhment, and 20 for acquittal; no doubt death is excluded, for there are 40 to 21 againſt it: but in the ſame way it may be ſaid, that the accuſed muſt be puniſhed with baniſhment, or in ſome way or other, becauſe there are 41 to 20 for puniſhment. The concluſion, however, is not juſt as to the laſt; for the reaſon aſſigned, that the 21 may have thought, that, if the accuſed were not to be puniſhed capitally, they ought not to be ſo at all; being of opinion, that killing the deceaſed by his command was not criminal at all.

If they be over-ruled, and it be determined that the deceaſed was killed by his own command, the 21 ought to vote in the next queſtion, Puniſhable or Not, and vote Not. This is not inconſiſtent with their former opinion, for the caſe is altered by the judgment finding the accuſed not guilty of murder, a new caſe is preſented, and upon that they ought to determine. For the ſame reaſon, thoſe who have voted for acquittal, if they be over-ruled, ought to vote for the

flight.

ſlighteſt puniſhment, for a new caſe is preſented to them too. It may be ſaid, How can they vote to puniſh thoſe whom they think innocent? I anſwer, They have voted not to puniſh him; which diſcharges their conſcience: but having been over-ruled, and it having been eſtabliſhed by a preceding judgment that he is not innocent, and that he muſt be puniſhed, a new caſe, or *ſpecies facti*, is preſented to them; and they ought to determine on this caſe as to them ſeems proper, in the ſame way as in the former. On this ground, it ſhould ſeem, that it may be laid down in general, that the Judge, whoſe opinion is over-ruled, ought to go on voting, in all ſubſequent queſtions, ſo as to come as near to his own opinion as he can.

The queſtion ought not to be put in ſuch a caſe, What ſhall the judgment be? ſo as to make way for three different claſſes of votes; one for death, another for an arbitrary puniſhment, and a third for acquittal; becauſe the ground of each of thoſe opinions is quite diſtinct and different from the reſt, and conſequently juſtice cannot be done

done without aſcertaining which of them is right, and ought to prevail, and that cannot be done without taking in all the opinions or judgments.

It is therefore neceſſary firſt to determine, Whether the accuſed have been guilty of murder, or of a capital crime? If it carry Not, it next muſt be determined, Whether they have been guilty of any crime? If it carry that they have, then it may be thought that a general queſtion may, and ought to be put, What ſhall the puniſhment be? and not, Shall it be baniſhment? Shall it be impriſonment? &c. for now there can be no difference in the ground of opinion; all are agreed, and muſt be held to agree as to the ground, which is guilt. As to the degree of puniſhment, that does not depend on any particular ground, but upon a variety of circumſtances and ideas.

But ſuppoſe that 15 are for baniſhment, 10 for impriſonment, and 10 for a fine; is there not the ſame reaſon for dividing the queſtion, or holding that the two laſt muſt be accumulated againſt the ſeverer firſt?

firſt? There is a clear majority againſt baniſhment; therefore the other queſtion ought to be put, Impriſonment, or a Fine? and it will carry for what is thought the ſevereſt: but it may be thought that the degree of puniſhment is not, ſtrictly ſpeaking, a queſtion of judgment: it depends on a variety of conſiderations that are not grounded on juſtice, *e. g.* The circumſtances and ſituation of the pannel, public utility and example, &c. and therefore ſuch puniſhment is called an *arbitrary* puniſhment, which implies, that it is not to be regulated by principles or grounds.

Voet*, upon the authority of a ſingle text, ſtates, that, by the civil law, if, of three arbiters, or judges, one be for awarding to the purſuer L.15, another L.10, and a third L.5, decree can go out for the L.5 only, becauſe, *majori ineſt minus*, and they all concur as to L.5: and he diſapproves of the opinion of another Commentator, (Groneweguen,) who holds that it ought to go for L.10.

It

* Comm. at tit. de Receptis, ſ. 19.

It appears to me that this queſtion cannot be determined in the general, and that to reſolve it, the *grounds* of the different opinions muſt be known and conſidered. It is very poſſible that *majori ineſt minus* does not apply, *e. g.* If the claim be founded on three different obligations, one for L.15, another for L.10, and a third for L.5; and one opinion be that the firſt claim is well founded, the other two not; the ſecond that the claim for L.10 is well founded, the other two not; and the third, that the claim for L.5 is well founded, the other two not:—It is obvious, that in ſuch caſe, he who is for L.15 is not for L.5, nor he who is for L.10. The queſtion ought to be put on each, ſeparately, and it will carry two to one, That not one of the claims is juſt, and that the defender muſt be diſcharged of them all.

But if the claim be made, or ariſe from one obligation, *e. g.* If the value of a horſe be referred to three men, and one ſays L.15, another L.10, and a third L.5, it is clear that in this caſe *majori ineſt minus*, he who thinks the horſe worth L.15, certainly thinks him worth L.10, and worth L.5 too; he

he who thinks him worth L. 10, thinks him worth L. 5; but he who thinks him worth L. 5 does not think him worth either L. 10 or L. 15; ſo there are two opinions to one that he is worth L. 10, and that ſum ought to be awarded.

I have looked into Groenewegen, who does not treat the queſtion fully or accurately: he ſays however, juſtly, that whether *majori ineſt minus*, muſt depend on the *intention*. He holds that the opinions cannot have effect. This is clearly wrong: effect is given to them in the firſt caſe ſtated, by putting the queſtion, as I have done, on each ground, which brings out an abſolution. He ſays, in practice, the middle opinion is followed. This is very right in the ſecond caſe, but in the firſt muſt be unjuſt; being contrary to the majority of judgments, which is for abſolution.

With regard to a Judge voting againſt his own opinion, I heard lately a caſe ſtated that deſerves to be conſidered:—An action having been brought for ſetting aſide a deed on the head of fraud, ſome of the Court

were for diſmiſſing it with coſts, but a majority ſet the deed aſide: they differed, however, among themſelves when the queſtion came to be as to coſts; ſome of them thinking that there were circumſtances which ought to ſave the defender from coſts. Whether ought the minority to vote in this queſtion? and if they do, in what way? Suppoſing them to be of opinion, that if the deed ought to be ſet aſide, coſts follow of courſe, the circumſtances alluded to not being ſufficient to free from them.

I have laid down in general, above, that a Judge whoſe opinion has been over-ruled ought to vote in ſubſequent queſtions, ſo as to come as near to his opinion as he can: *e.g.* If he was for Acquittal, and it carry to Puniſh, he, in the queſtion, What ſhall the puniſhment be? ought to vote for the mildeſt; and from that principle it ſeems to follow, that he ought to vote againſt expences in the caſe laſt put. The maxim *res judicata pro veritate habetur*, does not apply here; it is a preſumption, only a juſt one, when the merits cannot be known, but it muſt yield to truth; and the Judge who voted

ed againſt the determination, ought to pay no regard to it in ſubſequent and ſubordinate queſtions.

In March 1776 the following caſe occurred before the Court of Seſſion:—A Gentleman having been admitted to the roll of the Freeholders of Fifeſhire, a complaint was preferred, complaining of his having been put upon the roll, and praying to have his name expunged; upon two grounds,—1*ſt*, That the eſtate on which he had claimed being, as was alledged, not a proper, but improper wadſet, did not conſtitute a legal qualification. 2*dly*, That his ſeiſin was null. The mode of putting the queſtion was not argued in the papers, on which the Court judged 7th March 1776. A majority of the Court, (conſiſting of thirteen Judges,) were of opinion, that upon one or other of the grounds the Freeholders had done wrong in admitting him to the roll: but his counſel having moved that the queſtion ſhould be put ſeparately on each point, that mode was adopted; and it carried by a majority of nine to four to repel the objection to the ſeiſin, and by the ſame majority, to repel that to the form of the right.

Againſt this judgement a reclaiming petition was written and printed*, but not moved, or even (I believe) preferred; the committee of the Houſe of Commons, that was to try the Fifeſhire election, being to meet in a few days. The queſtion, as to the propriety of putting the queſtion ſeparately, was canvaſſed in that committee. The argument againſt it is thus ſtated in Douglas, vol. iv. p. 217, 218. "The impropriety of this "mode of deciding a cauſe cannot eſcape "the committee, and the numerous and "groſs inconveniencies which would flow "from it will occur, without being particularly pointed out. The buſineſs of a Court "of Judicature is to determine the rights "of the parties to the ſuit, not to moot and "decide abſtract points of law: but according to the method adopted in this caſe, it "is evident, that a party might have the "whole Court, without one diſſenting voice, "in his favour, and yet the judgement be "given for his opponent. Every ſeparate argument might be made the ground of a ſeparate queſtion; and if there were eleven "points,

* March 8th, 1776.

" points, or arguments, eleven Judges, and a " ſingle Judge againſt the oppoſite party on " each point, and therefore each of the ele- " ven, upon a *general* queſtion, obliged in " conſcience to vote againſt him; yet ten " being for him on each *ſeparate* point, the " deciſion would be in his favour. The " Courts of law in England, aware of this " manifeſt abſurdity, never ſeparate the " points of a cauſe when they come to give " judgment; but each Judge, acting upon " his own reaſons, and delivering thoſe rea- " ſons if he ſo thinks fit, the judgment is gi- " ven *generally* for the Plaintiff or Defend- " ant."

The argument in ſupport of it is thus ſtated, p. 224, 225: "When that mode of pro- " ceeding ought to prevail, and when it " ought not, muſt depend on the particular " circumſtances of the caſe: but it would " be eaſy to put caſes where a degree of in- " juſtice and abſurdity would be the conſe- " quence of not ſeparating the queſtions " equal to what the counſel on the other " ſide ſuppoſe neceſſarily to follow from ſe- " parating them. If, for inſtance, in the pre-

" ſent

" ſent cauſe, the queſtion had been put ge-
" nerally, and the deciſion had been to ex-
" punge Mr Dalrymple from the roll; ſtill,
" as it happened, a majority of the Court
" would have thought his eſtate was a pro-
" per wadſet, and a majority alſo would have
" thought his ſeiſin good: and if two differ-
" ent cauſes had come afterwards to be tri-
" ed, in one of which the ſole queſtion was
" on a wadſet, like the preſent; and in the
" other on a ſeiſin, alſo like the preſent, the
" majority of the Court, in each of thoſe cau-
" ſes, muſt have decided in favour of the
" Defendant, though the *neceſſary* inference
" from their deciſion in Mr Dalrymple's
" caſe would have been, either that his eſtate
" was not a proper wadſet, or that his ſeiſin
" was void."

Mr Douglas, in a note upon the alledgeance that the practice in England was the other way, adds, 263. 264. In " confirmation of " what is here alledged, ſee the caſe of the " Earl of Shrewſbury againſt the Earl of " Rutland, on a writ of error to the Court " of King's Bench, Hill. 7. Jac. 1. (1. Bul-" ſtrode 4. to 11.) In that caſe, three errors

" were

" were aſſigned; yet though, in delivering " their opinions, there were three out of " five Judges who agreed with the Court of " Common Pleas on each ſeparate point, the " judgment was reverſed. From the report " of the caſe, the propriety of ſeparating a " cauſe, where there are different points, in- " to diſtinct queſtions, appears to have been " fully argued; and the Court held that it " ought not to be done.

" To aſcertain which of the methods is " the right one, or in what caſes the one " ſhould be followed, and in what caſes the " other, ſeems to me a problem of very " great nicety, and very difficult to ſolve."

I have looked into the report of Bulſtrode, in Lord Shrewſbury's caſe, referred to by Mr Douglas; and I find, that though the grounds of error aſſigned were fully conſidered, yet there was no argument at all with regard to the motion for putting the queſtion ſeparately.

From Mr Douglas's ſtatement, this ſeems to be the ſingle caſe in which the queſtion was

was put generally in the King's Bench; the authority, therefore, of the Engliſh practice cannot be referred to on either ſide.—But this is a matter in which practice ought to have no authority or weight given to it.

The moſt plauſible argument for putting the queſtion ſeparately, ſeems to me to be: —The queſtion is, Whether is there ground in law for expunging from the roll or not? That ought to be determined by the majority of opinions, and therefore the queſtion put on each point; for if it is in general, then the minority, not the majority, of judgments or opinions prevails.

If the queſtion in the Fifeſhire caſe had been put in general, the five opinions for repelling both objections would have been deprived of the aid of the four who concurred with them oneach ſeparate objection; and each four would have had the aid of the other, tho' they did not concur, but differed on each objection.

The queſtion here is not, Whether the complaint ought to be ſuſtained or not? or, Whether the reſpondent ought to be expunged

ged from the roll or not? but, Whether it be juſt that the complaint be ſuſtained, and how is the juſtice to be come at by the Court? in the ſame way as by each individual Judge, who, before he can determine in general, muſt, in his own mind, determine firſt on each particular objection.

If the queſtion be put in general, it will carry, Suſtain the complaint, by eight to five votes: but no ground or reaſon can be aſſigned in the judgment, becauſe there are nine to four opinions againſt every ground of the complaint; ſo the determination is the decree, but not the judgment of the Court; yet it is the majority of judgments, or opinions, that ought to prevail. If the queſtion be put point by point, Reaſon prevails, and aſſigns her grounds, ſhe repells the objections, and therefore diſmiſſes the complaint; but if the queſtion had been put in general, and the complaint ſuſtained, no reaſon could be aſſigned, nor could the objections be with truth repelled.

In the caſe under conſideration, the different grounds of complaint are quite diſtinct, and each might be made the ground

of a ſeparate action or complaint; and, if that had been done, it is plain, each complaint muſt have been diſmiſſed: now, why ſhould any advantage be gained by throwing them into one action or complaint.

It was admitted, however, in the caſe from Fife, by the advocates for the ſeparate queſtion, that no general rule could be laid down, and that it depended on the circumſtances of the caſe, Whether ſeparate queſtions, or a general one ought to be put? and all of them whom I have heard upon the ſubject agree, that in caſes where the grounds are not perfectly diſtinct, but aid one another, and in all circumſtantial caſes where a challenge is on the head of fraud, the queſtion muſt be put in general, becauſe in all ſuch the circumſtances aid one another. But caſes of mere law, in which the points are perfectly diſtinct, may be figured, where the queſtion muſt, notwithſtanding, be put in general, *e. g.* If one claims the effects of a defunct as having right to them by the law of the place in which was his domicil; another claims them by the law of the place in which they are ſituated; and a third by the

the law of the native country: the queſtion muſt not be put ſeparately, Shall the law of the domicil be the rule? for, if it were, it might carry that no law at all ſhould be the rule, *e. g.* Suppoſe twelve ordinary Judges and the Preſident, (who has a vote only in caſe of equality) preſent, and that four of the twelve ordinary Judges are for each of the claimants; upon ſeparate queſtions, it would carry eight to four, that neither the law of the domicil, *rei ſitæ*, nor native country, ought to regulate, and the cauſe could not be determined.

The putting ſeparate queſtions in ſuch a caſe, were evidently improper and abſurd. The vote on each queſtion does no more than determine an abſtract negative propoſition, which is inſufficient for deciding the cauſe. The queſtion muſt be, Prefer A, B, or C, or which law ſhall be the rule? and he who has the caſting vote for him will carry it.

The vote on the ſeparate queſtions in the caſe of the Freeholder did not determine mere negative propoſitions. Each queſtion

involved two oppoſite propoſitions: there was a fair contraſt in it, and a poſitive determination was given on the two propoſitions on which the rights of the parties depended.

But the great difficulty is, to aſſign a ſufficient reaſon for the diſtinction which is admitted to be juſt by thoſe who are for ſeparate queſtions, and to draw the line; for if none be drawn, it makes way for diſcretionary power, which ought to be avoided if poſſible. It may be ſaid, if a claim is founded on a propoſition, as of law, which the other party diſputes, every individual Judge, before he can form an opinion, muſt determine in his own mind previouſly upon every argument that has been urged, or has occurred to himſelf,—ought not the Court, which is a collection of Judges, to do the ſame?

In the ſame way, what facts have been proved or not, muſt be determined, by every individual Judge in his own mind,---ought not the Court to do the ſame?

If

If they do, it may happen that a point ſhall be determined for a party on a ſeparate general queſtion as to it, though on a ſeparate particular queſtion as to each argument, every one of them might have been voted inſufficient.

And in a caſe of fact, a deed may be ſet aſide on the head of fraud, tho' on a queſtion as to each circumſtance, every one of them might have been found not to be proved. It may be ſaid, that putting the queſtion on each point ſeparately cannot claim, with reaſon, the merit it pretends to of bringing out the real juſtice of the caſe, and giving effect to the majority of opinions or judgments, for the reſult of them could only be known from a ſeparate queſtion on each argument. If a majority declares that every argument urged in ſupport of a propoſition in law is inſufficient, it ought not to be held to be law; and putting a ſeparate general queſtion on the point, diſappoints juſtice. In the ſame way, if every fact founded on, be not proved according to a majority of opinions, the putting the general queſtion, Proved or not? or, Suſtain

or

or repell the reaſons of reduction? is improper.

What if the arguments aid one another? then it may be thought they amount but to one argument.

In circumſtantial caſes, the different facts aid one another undoubtedly; and therefore after it is aſcertained what are proved, a ſeparate queſtion ought not to be put on the relevancy of each, for they amount to one argument, that the caſe falls under, *e. g.* fraud, but the queſtion ought to be general, Reduce, or Suſtain the deed?

Beſides, in moſt caſes, it would be troubleſome and tedious to put ſeparate queſtions on each argument or circumſtance; and, in many, inſufferably ſo, and indeed inextricable, eſpecially in queſtions of fact. Whether a fact be proved or not, depends on the degree of credit given to witneſſes, the effect of real evidence, &c. as to which, different men will form different opinions, according to their temper and feelings; ſo that no fixed principle can be here reſorted to, and

and therefore they are not ſuch proper objects for a ſeparate queſtion being put on the proof of each fact, as propoſitions in law. A court of juſtice ought to act as an individual as far as it can, but it can do ſo only to a certain extent: from which it may be inferred, that though, for various reaſons, it may be expedient that a Court conſiſt of a number, yet, in the abſtract, the Court is moſt perfect that conſiſts but of a ſingle Judge. He can always aſſign his reaſons, a numerous Court frequently cannot.

I have heard a very ingenious and humorous argument ſtated againſt putting ſeparate queſtions.—Four men, (it was ſaid,) having met to drink a bowl of punch; after the firſt glaſs, one of them objected that it was too ſweet, but on a vote it carried three to one that it was not; another maintained it was too four, but that objection was over-ruled by the ſame majority; the objection of a third that it was too ſtrong, ſhared the ſame fate, as did that of the fourth, that it was too weak. Thus it carried upon ſeparate queſtions that the punch was

was liable to no objection, yet none of the company would drink it; and, had the queſtion been put in general, Is the punch good or bad? it would have been declared bad with unanimity.

But to the argument from this example, it may be anſwered, that the queſtion did not depend upon judgment, but taſte; and that the intention of making a bowl of punch, being to produce a liquor agreeable to every one of the company, unanimity was eſſential, and any queſtion improper.

In the reclaiming petition above-mentioned, (p. 17,) it is ſaid, "It is a jeſt to ſay that a point and an argument are different; as all points are arguments, and all arguments are points." Where a libel contains ſeveral concluſions, as one for payment of a debt, another for relief of an obligation as ſurety for the defender; theſe may be called different points. But where the libel has but one concluſion, *e. g.* the reduction of a deed, the ſeveral objections to the deed are ſo many grounds and reaſons for ſetting it aſide, and cannot be called points more than

than any argument that may be urged againſt the deed.

This paſſage ſeems to involve ſeveral miſtakes. A point, as the word imports, is a preciſe, unconnected propoſition, according to the truth or falſehood of which, judgment muſt be given for one or other of the parties. The concluſion of the libel is not a point, but an inference drawn from one. The libel referred to in the above paſſage is, in reality, two libels in one. All points are, no doubt, arguments, and deciſive ones; but all arguments are not points. They are conſiderations, or reaſons, for eſtabliſhing a point, if diſputed; or for ſhewing, if it be admitted, its applicability to the caſe: but they are not in many caſes points, becauſe they are not unconnected, deciſive propoſitions; but aid one another, and, in effect, amount but to one argument. If, in a reduction of a contract on the head of fraud, *e. g.* it be proved, 1*ſt*; That the granter had drunk freely; 2*dly*, That he was a man of an eaſy temper; 3*dly*, That no friend, relation, nor perſon of character, had been adviſed with, and that there was ſome inequality in the bar-

gain; theſe circumſtances are not points: for they are not deciſive, unconnected propoſitions; but reaſons or arguments for bringing the caſe under the point (which cannot be diſputed) *viz.* that every contract may be ſet aſide on fraud. Each of them is not ſufficient of itſelf, but the amount of the whole is; and therefore it would be improper to put a ſeparate queſtion on the relevancy of each. They have no reſemblance to the two points in the caſe of the Freeholder, as to the ſufficiency of the right and validity of the ſeiſin; for a queſtion on each of theſe determined a preciſe, unconnected, deciſive propoſition.

If, in that caſe, the nullity of the ſeiſin had been maintained, 1*ſt*, Becauſe it was not conform to its warrant; 2*dly*, Becauſe it was taken at a wrong place; and, 3*dly*, Becauſe it was not legally authenticated;—theſe three are preciſe, unconnected, and deciſive propoſitions: they are arguments, no doubt, but they are points too; and if a ſeparate queſtion be at all proper, it ought to be put on each of them; for each of them, if made out, would annul the ſeiſin.

If

If the point be not admitted, and various arguments be urged for eſtabliſhing it; if they be not unconnected, but aid one another, a ſeparate queſtion ought not to be put on each: but if they be quite diſtinct and unconnected, it may be thought a ſeparate queſtion ſhould be put on the ſufficiency of each*.

Of

* Since writing upon this ſubject I have ſeen *Condorcet's* "Eſſai ſur l'application de l'analyſe à la probabilité des deciſions, rendues à la pluralité des voix," publiſhed at Paris, 1785. He holds that the queſtion muſt be put ſeparately, on this principle, that a ſyſtem of propoſitions is true, only becauſe each of the propoſitions of which it is compoſed is a truth. Vide Diſc. prelim. p. 47. And he adds afterwards, Juſtice requires "Que le ſyſtème des propoſitions ſimples qui les forment ſoit rigoureuſement développé; que chaque avis poſſible ſoit bien expoſé, que la voix de chaque Votant ſoit priſe ſur chacune des propoſitions qui forment cet avis, & non ſur le réſultat ſeul. La manière de propoſer la queſtion à décider eſt donc très-importante; la fonction d'établir cette queſtion eſt donc une des fonctions les plus délicates & les plus difficiles que le Corps, chargé de décider, ou ceux qui l'ont établi, puiſſent confier. Cependant chez les Anciens, & même chez les Modernes, elle a été preſque par-tout abandonnée au haſard, ou donnée comme un pouvoir, un droit attaché à une dignité, & non impoſée comme un devoir qui exige de la ſagacité & de la juſteſſe." Ibid. p. 69. See alſo p. 117. quarto edit.

Of Appeals.

NOTHING can be more incongruous than appeals from the Court of Seſſion to the Houſe of Lords. Such appeals are not ſupported by the articles of Union, in which there is not a word about appeals, They have taken place from a mere, and very imperfect analogy. It by no means followed, that, becauſe an appeal was competent to the Parliament of Scotland, it was competent on the Union to the Houſe of Lords. —An appeal to the Parliament of Scotland was an appeal to the whole Parliament of the kingdom; an appeal to the Houſe of Lords is an appeal only to one of the branches, or houſes, of the Britiſh Parliament. An appeal to the Scots Parliament brought the caſe before a number of men who underſtood well the law of the country: an appeal to the Houſe of Lords brings the cauſe before a ſet of men who cannot poſſibly underſtand the law of Scotland. It would have been better at the Union this

this matter had been taken into conſideration, and ſome other mode of review within the country adopted: for it is a palpable abſurdity, to carry away queſtions of Scots law from a Court that does underſtand them, to a Court that cannot. We never hear of an appeal to the Houſe of Peers from the King's Bench, Common Pleas, &c.; the reaſon is, that in England they have another kind of appeal. The Courts there, I believe, review the judgments of each other in a certain meeting and manner. If the Court of Seſſion were divided into different Courts, and the Exchequer were to get, as it ought, a ſhare of the buſineſs, ſome ſuch method ought to be followed in this country: it is moſt humiliating, in my opinion, to have an appeal from our ſupreme Courts to one out of the country.

Of Criminal Law.

In the "Loiſirs de Chevalier d'Eon," tom v. there is a pretty full account of the laws of Ruſſia; particularly of the additional code compoſed by order of Peter the Great, and the entire new code of the late Empreſs.

The Czar diſcharged every Judge, under pain of death, from interpreting the laws and conſtitution. If the meaning of this regulation be, that no man ſhall be puniſhed for a crime at common law, it ſeems to be wiſe. Some criminals may, perhaps, eſcape in conſequence of it; but better ſubmit to that inconvenience, and extend the law by ſtatute from time to time, than make way for arbitrary puniſhments.

In every country there ought to be a criminal code, defining every crime, and ſpecifying the puniſhment. This code ought to be promulgated, and ſhould be one of the books

books which children ought to ſtudy. In this country we have no criminal law promulgated, except a part of the Jewiſh, called the Ten Commandments, which are generally exhibited upon two tablets in churches. As to civil matters, I obſerve that the Commiſſioners of the Revenue do give notice, by advertiſements in the Newspapers, of ſuch ſtatutes as paſs with regard to it. This they do *ex proprio motu*, for theſe ſtatutes do not require it. No notice whatever is given of any other ſtatutes. The principle upon which the promulgation of laws has ceaſed is, according to Erſkine in his Inſtitute, that every man is, *fictione juris*, ſuppoſed to be preſent in Parliament when they paſs.

This is moſt abſurd, eſpecially conſidering the ſtate of our repreſentation: but whatever that may become, promulgation of the laws ought to take place; the obſervance of which is eſſential to ſociety; theſe ought to be conſtantly kept in the view, or frequently brought to the remembrance of the people. In a late charge to the Grand Jury, who found a bill againſt Downie and Watt,

Watt, it is obſerved, " That we knew but " little of the treaſon laws, of which we had " no experience for a very long time." The obſervation is juſt; but if the Judges, ſelected from the ſupreme Courts of this country, who compoſed that tribunal, knew but little of theſe laws, how ſhould the poor priſoners have known any thing at all of them? The obſervation evinces, that as ſoon as there was the appearance of commotion among the people, the treaſon laws ought to have been carefully promulgated. The ſame inference is to be drawn from an obſervation made by a learned Judge at the circuit ſubſequent to theſe trials: " He was afraid (he ſaid) the peo- " ple of this country ſuppoſed that they " might meet to concert and conſpire againſt " Government, and were not liable to pu- " niſhment if execution did not follow."

There can be little doubt that the people did, and muſt have ſuppoſed ſo; becauſe common ſenſe, as well as common law, teaches, that no man ought to ſuffer for mere intention, " *cogitationis pœnam in foro nemo patitur;* and therefore juſtice, as well as expediency,

diency, required that they ſhould have had warning of the ſtatutory exception.

As to civil matters, the common law muſt be allowed to remain: not that it is highly proper to have a civil code too, but becauſe the nature and number of civil caſes is ſuch, that a multitude of them muſt occur which cannot be determined by reſorting to a civil code, however accurate it may be. That is not the caſe as to crimes. It is poſſible, now a-days, to foreſee all the crimes that can be committed with much prejudice to ſociety: and though it ſhould happen that criminal ingenuity ſhould hit upon an offence not foreſeen, and eſcape, from the common law being ſuperſeded, the inconvenience is not to be put in the balance with that ariſing from the power of arbitrary determination and puniſhment.

Soon after the ſentence of the commiſſion, adjudging Watt and Downie to be hanged, after having their hearts taken out, &c. I read in a news-paper, that, in America, the puniſhment of death had been aboliſhed, except for what they call murder in the firſt

degree. The Empreſs of Ruſſia had, many years ago, aboliſhed the pain of death, except for murder and duelling. With regard to the laſt, it is the aggreſſor only who is to ſuffer: by which expreſſion, ought to be, and probably is meant, the perſon who unreaſonably provoked the conteſt. The abolition of capital puniſhment had alſo taken place long ago in Tuſcany; and, according to all accounts, in none of theſe countries have crimes become more frequent. The temper, manners, and circumſtances of the people, muſt be conſidered in regulating this matter.

Of

Of Jury Trial.

Some have thought, that the admiration of the mode of trial by a Jury of the vicinage, is a vulgar error. The object of the law (they ſay) in all trials is, or ought to be, to get a ſet of Judges as impartial and intelligent as poſſible. To acquire a thorough knowledge of the rules of juſtice and evidence, which are, and muſt be, complicated in every great commercial country; to be able to detect the fallacy of ingenious pleadings, and gather the truth from contradictory teſtimonies, requires a liberal education, deep ſtudy, and long experience. It is plain, therefore, that an *occaſional* Jury cannot be ſo intelligent as Judges. A ſtanding, or ſelect Jury, is a very different thing; it comes very near to a ſet of Judges.

As to impartiality, it is manifeſt that a Jury of the vicinage muſt be the moſt partial tribunal that can be compoſed. The law of

England, ſenſible of this, has introduced a variety of checks and precautions, which, however, ſome late trials have proved not to be ſufficient; particularly thoſe of the Birmingham rioters, who burnt the houſes of Dr Prieſtly and ſome others. There are no ſuch checks in Scotland; but the public proſecutor in that country, aware of the danger, has frequently brought criminals from different counties to be tried at Edinburgh, in order to avoid local paſſions and prejudices. This, however, is but an imperfect remedy; for there are paſſions and prejudices which are univerſal; ſuch as thoſe ariſing from politics, religion, and even property. Would it be juſt to try a man, accuſed of being a poacher, by a Jury of landed gentlemen aſſociated and zealous to ſupport the game laws? It has often happened, both in political and judicial arrangements, that no attention has been paid to certain ſteps of procedure, on account of their obſcurity and ſeeming inſignificance; though, in reality, they were of the utmoſt conſequence. The power of ſummoning the Jurors is an inſtance: if it be abuſed, all the ſubſequent and derivative procedure muſt be unſafe.

It

It appears from Blackſtone, that great pains have been taken in England as to that matter; but, after all, there ſeems to be reaſon to think that enough has not yet been done. We often find it aſſerted, in ſpeeches and pamphlets, that the Jury was packed. Now, ſince the Engliſh have a *vox ſignata*, a particular expreſſion for that manœuvre, it is plain that it is not impoſſible, nor indeed uncommon. It will probably be found that the error is in the firſt ſtep. The Jury ought not to be ſummoned by the Sheriff, or by the Court, or clerk of Court.

Since an occaſional Jury cannot be as intelligent and impartial as Judges, it ſhould ſeem that Jury trial has been adopted, not becauſe it was thought good in itſelf, but becauſe it was thought better than trial by Judges; of whom a jealouſy has been entertained, chiefly on account of their being appointed by the Crown.

If this be the principle, it follows, that the power of ſummoning a Jury ought to be veſted, ſo as to exclude all poſſibility of influence from that quarter. The Jurors ought to

to come on by ſome other method which would have that effect.

The allowing challenges to be made, without cauſe, to a great number of the Jurors, ſhews a very good diſpoſition in the law of England, but it is inſufficient. The ſpecial Jury ſeems to be the faireſt, and indeed as fair as poſſible. Why is it not the mode of trial in criminal caſes, as well as civil? or, Why not adopt the principle of the mode of trying a conteſted election in the Houſe of Commons? It is curious enough, that a man is certain of a fair trial as to the merits of a controverted election, but muſt be expoſed to a packed Jury when arraigned for his life.

There is no check, or regulation, as to this firſt ſtep in Scotland. Another defect there is, that, in practice, challenges without cauſe are not known. As there is no law prohibiting them, it ſhould ſeem that the criminal Court itſelf may remedy this: for, as the object of the law and of the Court is, or ought to be, to give a priſoner as fair a trial as poſſible; every meaſure that is neceſſary, or

or proper, for that purpoſe, ought to be adopted.

It is not eaſy to conceive on what principle of juſtice or reaſon the proſecutor, or the Court, can object to challenges without cauſe, if a number ſufficient to try be left: but if there be any diſinclination to this in the Court, a ſtatute ought to paſs putting this matter on the ſame footing as in England. I gave my opinion to this purpoſe twenty years ago. See Criminal Caſes publiſhed in 1774, p. 528. 771.

The next greateſt defect in our practice is the power which the criminal Judge, or the Preſident of the criminal Court (if it conſiſt of a number) has, of ſelecting the fifteen Jurors who are to try the priſoner. This power thwarts and counteracts the very object of law in eſtabliſhing trial by Jury, which is to controul, check, and diminiſh the influence of the Court. It would be moſt reaſonable to give the priſoner the choice of the fifteen; or if that will not be granted, they ought to be taken by lot: one or other of theſe modes is that which has been adopted

ed by the wiſeſt nations and legiſlatures, ancient and modern.

Monteſquieu ſays, " Les connoiſſances, " que l'on a acquiſes dans quelques païs, et " que l'on acquerra dans d'autres, ſur les " regles les plus ſures que l'on puiſſe tenir " dans les jugemens criminels, intéreſſent le " genre-humain plus qu àucune choſe qu'il y " ait au monde*." *i. e.* " The knowledge which " ſome countries have acquired, and others " will in time acquire, as to the ſafeſt rules to " be obſerved in criminal procedure, intereſts " the human race more than any thing in " the world." If ſo, it is aſtoniſhing that Jury trial ſhould be allowed to remain on the footing on which it is in Scotland. The ſame author ſeems to think, that the number of challenges allowed in England gives nearly the ſame ſecurity as the Roman method: but that I doubt very much; for the Roman method † was ſometimes by lot, ſometimes choice of parties, ſometimes a mix-

* De l'Eſprit des Loix. Liv. 12. ch. 2.

† See Adams's Roman Antiquities.

mixture of both *. This excluded the poſſibility of packing; but in England we often hear it alledged, that the jury were packed: now, what ſignifies jury trial, if there be a poſſibility of packing?

I am apt to think that this mode of trial owes much of its reputation to verdicts given againſt the crown in times of political controverſy, which were ſometimes far from being juſt. It is, however, I admit, the beſt mode in ſuch times; but in ordinary

* If the criminal law of the Romans be ours, as was maintained in the trial of Mr Muir for ſedition before the Court of Juſticiary, challenges without cauſe ought to be allowed, as they were by that law, both during the republic and under the emperors. This I learned from Voltaire, who, in his Lettre du Pere Polycarpe, ſays, "On nous dit que dans la patrie de "Cicéron, où le pouvoir de juger n'était attaché, ni à un cer- "tain état, ni à une certaine profeſſion, il était permis à tout "plaideur de récuſer le juge qu'il croyait ſuſpect, ſans être "même obligé de prouver la ſuſpicion. *Sors et urna dant judices,* "*licet exclamare: hunc nolo.* Cette liberté de récuſer ſes juges "ſubſiſta encore ſous les empereurs, comme je l'ai remarqué "dans une loi du Code, rapportée dans un ancien *factum* qui "m'eſt tombé par haſard ſous la main." "*Licet enim imperiali* "*numine judex delegatus eſt, tamen quia ſine ſuſpicione omnes lites* "*procedere nobis cordi eſt, liceat ei qui ſuſpectum judicem putat,* "*eum recuſare.*" Loi xvi. au cod. tit. *De judiciis.*

nary caſes, I apprehend it is not. I do not recollect to have ſeen, in the courſe of my own practice for thirty-two years, one ordinary caſe; nor did I ever meet with a lawyer who could tell me, that in the courſe of his practice he had ſeen one ſuch caſe, in which the Jury had differed from the Court, and were in the right: but I have ſeveral times ſeen, men guilty of murder, forgery, fire-raiſing, and other atrocious crimes, eſcape, by the erroneous judgement, or blundered verdict, of the Jury. The miſchief ariſing from this laſt might eaſily be remedied, by allowing the Court to ſend back the Jury, to correct and amend their verdict, when there is any miſtake in point of form, or otherwiſe, which makes the verdict, as written out, contrary to their meaning.

It has been much diſputed, whether the Jury ought to be judges of the law as well as of the fact*. It is very clear to me, that they

* See the Author's introduction to his Criminal Caſes, p. 18.

they ought to be judges of the law; becauſe no man ought to be condemned to puniſhment, unleſs the crime be ſo palpable as to be perceptible to the moſt illiterate. There is more reaſon for conteſting their right to be judges of the fact; becauſe to diſcover the fact, or truth, in the confuſion and obſcurity created by contradictory teſtimonies, and eloquent pleadings, requires a degree of experience, knowledge, and ability, not to be expected in ordinary jurors. It may be ſaid that this is ſupplied by the charge of the Judge. It is ſo, generally; but then this gives too much power to the Judge, eſpecially if he be entitled to ſelect the petit jury.

It has been propoſed by ſome of late to introduce jury trial in civil actions, excepting thoſe concerning land rights, after the example of England, it is ſaid; but the propoſers have not, I imagine, adverted to this, that jury trial is not known in the Court of Chancery in England, where the greateſt part of litigated property in that country depends, and muſt do ſo, as it judges of truſts, wills, marriage-ſettlements, &c.

If (as ſome have likewiſe propoſed of late) the Court of Exchequer, which has now very little to do, were to get a ſhare of the buſineſs of the Court of Seſſion, which has a great deal too much to do, it would be very right to appropriate to that court, which has already a Jury by its conſtitution, a number of cauſes generally admitted to be more proper for the determination of jurymen than judges; ſuch as actions of damages, mercantile queſtions, diſputes about coal-workings, and the like, for the determination of which a particular ſkill is requiſite: or ſuch queſtions might be tried at the circuits, where a Jury attends, and where there is generally little criminal buſineſs; but I doubt much whether this mode of trial could be incorporated with the procedure of the Court of Seſſion.

As to the Sheriff, and other inferior courts, it was not meant, I underſtood, that it ſhould take place before them; nor was it explained, whether, ſuppoſing it to take place before the ſuperior courts, an appeal or motion for a new trial would be competent? a very material queſtion. Any ſuch

ſuch alteration would require a number of regulations, complicated, and, I ſuſpect, very difficult of execution.

I have read a great part of a book entituled "*Science de Legiſlation*," a tranſlation from the Italian: who the author is we are not told; but that he is a man of worth and genius is proved by this work. I was ſurprized, however, to find, that, in his new ſyſtem of criminal law, he requires a jury of the vicinage and unanimous verdicts as in England; in which two particulars the ſyſtem of that country appears to me very exceptionable.

The paſſages in this book which moſt deſerve attention, are thoſe that treat of *this country and its conſtitution* *. This author is againſt enriching the Capital of a country by eſtabliſhing all the ſupreme courts there; and for having one in each county, with an appeal in a certain form, but within

* See vol. I. p. 69. 70. 142. to 177. incluſive; and vol. II. p. 250; and vol. VI. p. 41.

in the county. See vol. II. p. 178. This idea, if ever an alteration ſhall take place in the law of this country, ought to be well weighed.

I remember to have read, many years ago, in a book entituled "*Ami des hommes*," "Better have injuſtice at hand than juſ-"tice at a diſtance." The truth of this maxim may well be doubted of; but there can be no doubt that it is of infinite conſequence to have juſtice adminiſtered at no great diſtance.

Of

Of Capital Puniſhment.

THOUGH I have read much of late on the other ſide of the queſtion, I ſtill think that the puniſhment of death ought to be inflicted for murder, real proper murder; and that not only on account of the example, and to rid the earth of a perſon who has manifeſted ſuch cruel diſpoſitions, but in juſtice to the deceaſed.

This laſt conſideration is ſtated by Aulus Gellius; but the author of the Mercure de France, no. 24, 1790. (where this queſtion is very well argued) ſays that it is "*peu digne de la loi*," unworthy of the legiſlature. I do not ſee why. I ſee no reaſon why juſtice ſhould be refuſed to a man becauſe he is dead.

As to other crimes, leſſer puniſhments may perhaps ſuffice, ſuch as baniſhment, hard

hard and public labour, &c. The temper, manners, and circumſtances of the people, muſt be conſidered in regulating this matter.

I doubt much whether ſuch mitigation, as to high-way robberies, and other crimes, be admiſſible in this country. To ſay the puniſhment is exceſſive, becauſe the life of a man is infinitely more valuable than a watch, or purſe of money, is nothing to the purpoſe. The life of the man is taken away, not for the watch, or the purſe, but for public ſecurity, and that may be put in the balance againſt many lives.

It is ſaid, that in Tuſcany and Ruſſia where the mitigation has been introduced, crimes are not more frequent *. That may be

* Paſtoret, in his Treatiſe *des Loix penales*, i. 56. 57. ſays of the former country, "Qu'eſt il reſulté parmi eux de l'abolition "de la peine de mort? Beaucoup moins de coupables. Des "regiſtres exactes le prouvent. L'adouciſſement des loix avoit "meme deja produit cet effet. En 1779 en comparant les "dix dernieres années avec les dix années qui les precederent "ou trouva fort diminué le nombre des criminels." As to Ruſſia,

be a reason for trying it here, but it seems to me a dangerous experiment in a rich and luxurious country*.

Russia, he says, ibid, "that the Empress inflicts the pain of "death only for high treason."

In Pensylvania, too, capital punishment has been abolished, except for murder in the first degree, as they express it. All other crimes are to be punished with imprisonment for a greater or lesser number of years.

* Many of the members of the French Convention who voted for the death of Louis XVI. declaim against capital punishment, and declare that his is the last case in which they will agree to it.

Of the Puniſhment of Tranſportation.

PHILIPS, in the account of his voyage to Botany Bay, (p. 6.) ſays, "By the conteſt in "America, and the ſubſequent ſeparation "of the thirteen colonies, this traffic (of "convicts) was of courſe deſtroyed: other "expedients, well known to the public, have "ſince been tried, ſome of which proved "highly objectionable." In a note, he adds, "particularly the tranſportation of criminals to the coaſt of Africa, where, what "was meant *as an alleviation* of puniſhment, "too frequently ended in *death*."

He alſo ſets forth, that acts and Regulations were drawn up in conſequence of an order of Privy Council, and that a Statute paſs'd in 1787 erecting a court of judicature there.

This laſt Statute does not contain, refer to, or at all mention regulations of any kind; it does no more than erect a court.

In

In p. 73, he inſerts certain regulations, or orders, by the Governor of Botany Bay; but does not ſay, that theſe were drawn up by any order of the Privy Council. Theſe regulations, or orders, *inter alia*, bear, "the "convicts being the *Servants of the Crown* "till the time for which they are ſentenced "be expired, *their labour is to be for the pub-* "*lic*; and you are to take particular no- "tice of their general good behaviour, that "they may hereafter be employed, or re- "warded, according to their different me- "rits." No other regulations reſpecting this matter are to be found any where.

The ſtatute of the 25th of his preſent Majeſty, entituled, "An act for the more effec- "tual tranſportation of felons, and other "offenders, in that part of Great Britain "called Scotland," Cap. 46. Sec. 1ſt, enacts, "that from and after the firſt day of "July 1785, when any perſon ſhall be law- "fully convicted before any court com- "petent for the trial of crimes in Scotland, "of any offence, *for which the puniſhment of* "*tranſportation, or baniſhment beyond ſeas, may* "*be inflicted*, it ſhall and may be lawful for

" the said court, to order and adjudge, that " such person or persons, so convicted as " aforesaid, shall be transported beyond the " seas in like manner as now is in use; " and in every such case, it shall, and may " be lawful for his Majesty, by and with " the advice of his Privy Council, to declare " and appoint to what place or places, part " or parts, beyond the seas, either within " his Majesty's dominions, or elsewhere out " of his Majesty's dominions, such offender " shall be conveyed, or transported: *and such* " *Court is hereby authorised and impowered to* " *adjudge the services of such offenders, and to* " *order them to be transferred to the use of any* " *person, or persons, and his and their assigns* " *who shall contract for the due performance of* " *such transportation.* And when his Majesty, " his heirs and successors, shall be pleased " *to extend mercy to any offender, or offenders,* " *who hath, or have been, or shall be, under* " *sentence of death, in that part of Great Bri-* " *tain called Scotland, on condition of transport-* " *ation to any place or places, part or parts,* " *beyond seas,* either for the term of life, " or any number of years, and such in- " tention *of mercy* shall be signified by

" one

" one of his Majesty's principal Secreta-
" ries of State, it shall be lawful for any
" court having proper authority, to allow
" such offender, or offenders, the bene-
" fit of conditional pardon, and (except in
" cases where such offender, or offenders,
" shall be authorised by his Majesty to trans-
" port himself, herself, or themselves,) to
" order the transfer of such offender, or of-
" fenders, to any person or persons, who
" shall contract for the due performance of
" such transportation, and his or their as-
" signs, for such; and the same term of years
" for which any such offender or offenders,
" shall have been ordered to be transported,
" or for such term of life or years, as shall
" be specified in such condition of transport-
" ation as aforesaid, shall have a property
" in the services of such offender, or offen-
" ders, for such terms respectively."

The sentences of transportation which have been pronounced since this act, both here and in England, are much in the same terms.

The sentence of the Court of Justiciary against

againſt Mr Muir bears*, " In reſpect of the " ſaid verdict, in *terms* of an act paſſed in " the twenty-fifth year of his preſent Ma- " jeſty, intituled, An act, &c. ordain and " adjudge that the ſaid Thomas Muir be " tranſported beyond ſeas to ſuch place as " his Majeſty, with the advice of his Privy " Council, ſhall declare and appoint: and " that for the ſpace of *fourteen* years from " this date; with certification to him, if, " after being ſo tranſported, he ſhall return " to, and be found at large, within any part " of Great Britain, during the ſaid fourteen " years, without ſome lawful cauſe, and be " thereby lawfully convicted, he ſhall ſuffer " death, as in caſes of felony, without be- " nefit of clergy, by the law of England," &c.

It was not meant by the Court of Juſticiary to adjudge Mr Muir's ſervices; nor did they ſuppoſe that ſuch would be the effect of the ſentence; they underſtood that the effect of it would only be to ſet down Mr Muir at Botany Bay, or at what place the

* See Robertſon's edit. of Muir's Trial, Edin. 1793. p. 139.

the King should appoint; but that after he was there, he could not be obliged to work, nor be detained; but that he might leave it when he could, and go to any part of the world, Great Britain excepted.

The then Dean of the Faculty of Advocates informed me, that in pleading on the relevancy for Mr Sinclair (whose trial went no farther) he argued, that the act 1703 made the punishment, fine, imprisonment, or banishment; and that as transportation for a term of years included imprisonment, the act could not comprehend it under banishment: upon which the head of the Court admitted, that the argument would be conclusive, if the person transported were obliged to remain in the place whither he was sent; but that he denied to be the case, and maintained he might leave it when he could.

That this was the understanding of the Court appears also from the pleading on the relevancy in Mr Gerald's case: one of the counsel for the Crown expresses himself thus: (Trial p. 74.) "My brother has told your "Lordships, upon the authority of Sir Geo. "Mac-

" Mackenzie, that baniſhment, by tran-
" ſportation, was illegal; becauſe it is im-
" poſſible to confine a man to any place
" to which he is baniſhed, as if your
" Lordſhips had a juriſdiction over him
" while he is in that place undergoing the
" ſentence of baniſhment: but that is not
" the caſe; for, from the moment that he
" has once landed, your Lordſhips have no
" further authority; you are not confining
" him there; he may go where he likes,
" provided he does not return to this coun-
" try."

He never would have thus laid down the law in the face of the Court, had he not known that they ſo underſtood it; if he had, he ſurely would have been interrupted. I know that this was the underſtanding of the Court, not from the information of others, but from a converſation I had with one of the Judges on this important ſubject *.

It

* He informed me at the ſame time, they thought his crime ſo great, that they might have adjudged his ſervice,

It appears to me that this ſentence goes beyond the intention of the Court.

The firſt enactment of the ſtatute, that it ſhall be lawful for the Court to tranſport as it formerly had been in uſe to do, is merely declaratory, and introductory to the following enactment, which was the real object and the *terms* of the act, viz. To give certain powers to the King, with regard to perſons convicted of crimes, for which tranſportation, with the adjudication of ſervice, was deemed a proper puniſhment.

The intention and meaning of the Court being as above ſtated, the ſentence ſeems to be erroneous, not being in terms of the ſtatute; it is not in terms of the firſt enactment. No ſentence indeed could be, properly ſpeaking, in *terms* of that clauſe, for it has no *terms*. It merely declares, that the Court

vice, without being over ſevere; but it was not their intention. Whether a difference of rank ought to make a difference of puniſhment is a queſtion I mean not at preſent to diſcuſs. I only obſerve, that if they had, it would have been the firſt example of their having adjudged the ſervice of a gentleman, and a moſt democratic determination.

may tranſport as they had done before. No powers are given to the King by that clauſe; ſo that if the meaning was merely to give Mr Muir a ſet-down at a particular place, without adjudging his ſervice, it cannot be ſupported by this clauſe, for it gives no ſuch power, nor any power the Court had not before: ſuch ſentence therefore can be ſupported only by the former law, or practice, and there was none that could ſupport it. As to the ſubſequent enactment, the ſentence cannot be ſupported by it, becauſe the ſervice was not adjudged, nor underſtood to be adjudged; yet ſuch adjudication is, by the expreſs words of the ſtatute, a pre-requiſite, before the *terms* of the ſtatute, that is the powers of the King, can operate. But farther, if ſuch was the meaning, the error of the ſentence is manifeſt, from the adjection of a term of years; for, to tranſport a man to a place for fourteen years, and at the ſametime underſtand and declare that he may leave it when he can, is incongruous and inconſiſtent.

The ſentence, according to the plain ſenſe of the words, reſolves into what is called *deportatio*

deportatio in the Roman law, or baniſhment to a particular place, for a certain time; which place the perſon ſent thither cannot leave, as the adjection of the term is an order to remain, and a warrant for detaining there, as far as ſuch ſentence can grant ſuch warrant. If it was meant that he ſhould be at liberty to quit the place when he could, why adject a term?

If it ſhall be ſaid *qui poteſt majus, poteſt minus*, that if the Court could have pronounced a ſeverer, they might a leſſer puniſhment; if they could have tranſported him to any place the King ſhould appoint, with an adjudication of his ſervice, *a fortiore*, they could tranſport him to any place the King ſhould appoint without ſuch adjudication.

I anſwer, this will not remove the error; becauſe, 1*ſt*, The ſentence bears to be in terms of the act of the 25th of the King, and that ſtatute gives no ſuch power: therefore, as the terms of the ſtatute have not been obſerved, the ſentence is erroneous, as it refers to the ſtatute; and to it alone, and not to the former law or practice, which indeed it could

not do, there being no previous law, or practice, authoriſing the Court to tranſport whither the King ſhould appoint.

2*dly*, The argument proceeds on a falſe aſſumption, that the power exerted is leſs, and the puniſhment milder. This may or may not be the caſe, according to circumſtances.

When a man was tranſported to North America, and his ſervice adjudged for a term of years, his fate was defined; he knew what he was to ſuffer, and how he was to be maintained. If his ſervice was not adjudged, the puniſhment was not very ſevere, as the climate was not dangerous, nor even unhealthy, and the ſituation of the country ſuch, as that he needed not want work if willing to take it.

But when it is allowed to tranſport a man to *any* place on the globe; it is plain that a much ſeverer, and, indeed, a capital puniſhment may be inflicted, under the appearance of an arbitrary one. If the climate be very unhealthy, he runs great riſk of being killed by it, as was the fate of many tranſported

ed to Africa. But ſuppoſe the climate not dangerous; ſuppoſe Mr Muir to be ſet down at Botany Bay, and that the Governor will have nothing to do with him, becauſe his ſervice is not adjudged, nor any power given over him; what is to become of him? he may work for his bread: What if he cannot get work? What if (as is moſt probable) by the time he get there he be unable to work?---he muſt die.

It is underſtood (I have been well informed) in England, that ſuch a ſentence *implies* an adjudication of the ſervice, and it is not expreſſed in ſentences of tranſportation pronounced there. It muſt be ſo underſtood, if implication be admiſſible in ſuch a matter; which may well be doubted, as the ſtatute makes adjudication of the ſervice a pre-requiſite. I have heard much of Engliſh accuracy in judicial proceedings, but theſe ſentences are, I apprehend, no proof of it.

If the Engliſh idea be right, the Scotch one is wrong; and this laſt is clearly wrong, in as far as it ſuppoſes that the perſon tranſported may leave the place when he can; for the tran-

tranſporting him for a term of years, is an order upon him to remain: if this be the caſe, he may be detained ſo long; from which it follows, that the argument from the act 1703 is invincible.

The Engliſh idea is, that ſuch ſentence virtually adjudges the ſervice. Certain it is, from the regulations above tranſcribed, that it will have that effect; and conſequently that the ſentence, in the caſe of Mr Muir, goes beyond the meaning of the Court, and therefore is erroneous.

This point, though of great conſequence to the unfortunate Gentlemen who were ſentenced, does not ſeem to have been ſufficiently canvaſſed, or conſidered, by any perſon concerned at the time of their receiving ſentence. Nor was it ſo at paſſing the ſtatute in 1787. Regulations ought to have been deliberately framed, and then ſubmitted to the Legiſlature, which ought to have ſanctioned them.

This puniſhment of tranſportation has been too haſtily adopted, and too frequently

ly inflicted, eſpecially conſidering, that now Botany Bay and Africa are the only places to which convicts can be ſent. A long confinement in priſon, or in hulks; a long confinement on ſhipboard, muſt be a ſevere puniſhment to all; even a voyage of 1500 leagues muſt be a ſevere puniſhment to moſt men; but tranſportation, to a climate very diſtant and different from the native one, muſt frequently occaſion the death of the unhappy priſoner ſoon after his arrival at the deſtined place; for his conſtitution muſt be very much hurt and debilitated by his previous ſufferings. In ſhort, tranſportation always may, and frequently muſt reſolve into death, preceded by a tedious torture; on that account, it ought never to be inflicted for a crime which the law has declared ſhall not be puniſhed with death.

If a man has been condemned to death for theft, or ſome other crime (for which that he ſhould ſuffer there is a reluctance,) he may very properly be pardoned, on condition that he agree to be tranſported to Botany Bay; becauſe, though death may be the conſequence, yet, as that is not certain, the

the offer is favourable: or, if the Legiſlature, ſenſible that the over-ſeverity of the law has made the puniſhment of a crime capital, when it ought only to have been arbitrary, it may very properly change the puniſhment of certain death, into one which gives a chance of life; but it is plain, that tranſportation ought never to be inflicted but by way of mitigation.

ON THE

Origin and Progreſs of Literary Property.

THAT learning and learned men ſhould be encouraged, not checked, and that the knowledge which books impart ſhould be diffuſed, not confined, are propoſitions which, in this age, and in this country, will not be controverted.

Several acute and ingenious eſſays have been publiſhed on the ſubject of Literary Property; but every one who reads them muſt obſerve, that, however much bookſellers may pretend, all authors are intereſted in the quarrel; theſe pamphlets are not the ſpontaneous productions of authors, zealous to aſſert their injured rights, but the laboured efforts of gentlemen learned in the law, employed or importuned to compoſe them; nor will this appear at all ſurpriſing to thoſe who reflect on the trifling copy-money paid to the authors of "Paradiſe Loſt," and the

" Juſtice of Peace;" by which two books, thouſands and ten thouſands of pounds have been gained to the trade; and it is too true, that, invariably, tho' not always perhaps in the ſame proportion, the profits of the author are but a mite, when compared with thoſe of the bookſeller. No wonder then that authors ſhould

" Think what penurious maſters they have ſerv'd,
" Taſſo run mad, and noble Spencer ſtarv'd :"

and for that reaſon behold the battles of bookſellers with a frigid indifference, ſince, whatever way the diſputes may terminate, they are, to authors, *bella nullos habitura triumphos.*

It is the intention of this paper to ſtate ſome facts and obſervations, relative to this controverſy, not hitherto taken notice of; which, it is hoped, may have ſome tendency to throw additional light on the queſtion, and aſſiſt thoſe who are deſirous to try it by the dictates of common ſenſe, and the rules of public utility.

Before the art of Printing was invented, and

and while copies of books could only be obtained by the tedious method of tranſcribing, it is evident that authors could reap but little pecuniary advantage from the ſale of their performances, to compoſe which, the love of fame or of mankind (noble inducements!) were, for the moſt part, their only motives. Though we are now a-days told, that, were it not for the interpoſition of bookſellers, the public would be deprived of moſt works of merit, and of all that are attended with labour, difficulty, and expence; yet every perſon, not a ſtranger to claſſical learning, can atteſt, that, while copy-money was almoſt unknown, the moſt admirable works of genius, judgment, and application, were produced; and thoſe who are converſant with modern writings muſt be ſenſible, that though copy-money has multiplied books, yet it has rendered them generally worſe; has bribed men to proſtitute their talents, ſubjected wit and abilities to drudgery and dependence, and conſequently degraded, rather than advanced, the character of author.

But though there is no doubt that the

earlieſt and beſt works of antiquity were written and communicated to the world from no proſpect of gain, yet we may gather from ſeveral paſſages in Latin authors, that ſales of literary copies, for the purpoſes of recital or multiplication, were not unknown to the Romans*; and yet it is certain, that their lawyers, accurate and ſubtile as they were, never entertained an idea, that authors, after publication, could prohibit others from tranſcribing their compoſitions: a diſcovery reſerved, it ſeems, to illuſtrate the annals of modern juriſprudence.

The firſt inventors of printing were very deſirous to monopolize it, and therefore did their utmoſt to conceal it†, not being metaphy-

* See Blackſtone's Comm. on the Laws of England, Vol. II. p. 406. *in fine*. 4to. Oxford, 1766.

† "Inventores primos id clam habuiſſe, omneſque ſe-"creti conſcious, religione etiam jurisjurandi interpoſita, "excluſiſſe, ideoque vaſtæ molis opera per paucis opera-"riis fuiſſe concredita." *Maittaire Annal. Typogr.* I. p. 4. and in p. 10. he cites a paſſage from an author, who explains the particulars of the diſcovery. "Cum igitur Gu-"tembergius ad ſumptus refundendos damnatus fuiſſet, et "ex

taphyſicians enough to imagine, that by inventing they had acquired an excluſive right to exerciſe that art; but, in ſpite of their endeavours, it ſoon ſpread; printers multiplied, and interfered with one another, as all perſons muſt do, more or leſs, who are concerned in the ſame trade.

To prevent this inconvenience, ſome of the early printers applied to the Pope, the Republic of Venice, and to the Duke of Florence, to get the ſole privilege of printing the books of which they were the firſt publiſhers; and this they obtained for a term of years, ſeldom exceeding fourteen, and often not ſo long, as appears from the firſt editions of the claſſics, to which patents are commonly prefixed, excepting Cicero's Offices, and ſome others, printed before ſuch privileges were thought of.

Hence

" ex eo ſimultates inter illum et Fauſtum magis exarſiſſent,
" ille autem interea artem vidiſſet et didiciſſet, ſiquidem
" inter tot operas, quæ ad illam excudendam requiruntur
" fieri non potuit ut ea diutius occultaretur, quod etiam
" Deus procul dubio noluit, Moguntia Argentinam ſe contu-
" lit," etc.

Hence it is clear, that literary property was, originally, a privilege granted, not to authors, to prompt them to write, but to printers, to induce them to print editions of works that then lay in manuſcript.

But the tranſition, from the encouragement of printers to that of authors, was obvious; and accordingly, ſoon after, privileges appear in favour of the author, which are by him commonly aſſigned to the bookſeller, whoſe name is marked on the title-page; and, as the privilege is always limited to a certain period, the author never pretends to convey more.

Many of theſe privileges are granted under certain conditions; ſuch as, that copies ſhall be given to ſo many libraries; that the price ſhall not exceed a certain rate, and that the work ſhall be executed on the ſame paper, and with the ſame types, of which a ſpecimen had been exhibited before the privilege was conferred. The two firſt of theſe conditions were adopted by our ſtatute 8*vo Annæ*; but the proviſo, for regulating the prices, was afterwards repealed as impracti-

cable:

cable: ſo that, in this country, we have no check againſt the extortion of literary monopoliſts.

As abſolute power prevailed in the countries where thoſe privileges were firſt deſired, they would, doubtleſs, be granted without any demur about their legality, as they gave the prince a handle for ſuperintending and controlling the preſs, which muſt have been perceived by him, or his miniſters, to be of very great conſequence to government.

That power was early claimed as a part of the royal prerogative in this iſland, where the lawyers held, that printing was *inter regalia;* and, in Scotland, an act was paſt in Queen Mary's time, diſcharging any book to be printed without a licence, under the pains of confiſcation of moveables, and perpetual baniſhment: and in the reign of Charles II. a law was enacted much to the ſame purpoſe in England*; and privileges to

* Sir George Mackenzie, who was Lord Advocate for Scotland, in his Obſervations upon the act juſt now mentioned,

to printers and authors were readily granted in both kingdoms, all on a narrative of the humble ſupplication of the printer or author, and of the favour and indulgence of the prince*.

Upon this footing ſtood theſe privileges all over Europe, it never having been once thought, that they were granted *ex juſticia* in virtue of a *perfect* right, but indulged from

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tioned (act 27th Par. 5th Queen Mary) expreſſes himſelf thus:—"Printing is *inter regalia*, and ſo the king may "diſcharge any man to print without his licence. *Vide* "*Fritch. de Typographiæ Abuſu*, where he makes the re- "gulation of the preſs to depend upon every magiſtrate, by "the law of nations; and printing may do as much hurt "to the Government as arms; and ſo the magiſtrate ſhould "have the command of the one as well as of the other; "though I know it is moſt unjuſtly pretended by ſome "republicans, that, printing being a trade, no man can "be debarred from the free uſe of it, except by Parlia- "ment, in which their own conſent is implied. We ſee "alſo, that the king allows his own printer only to print "bibles and other ſchool-books, etc. *Vide act* 25. *Par.* "*XI. James VI.* againſt the ſellers of erroneous books." The ſame doctrine was maintained in England.

* See Ames's *Typogr. Antiq.* from p. 484. paſſim.

from favour, and a view to public expediency, in the ſame way as they had long before been given to the contrivers of uſeful machines, and others

"Inventas, aut qui vitam excoluere, per artes."

On the contrary, the ſtrict legality of them was called in queſtion, and only ſupported by arguments drawn from public utility; and it was admitted they ought to be recalled whenever productive of any inconvenience; and inſtances are not wanting of that having been done, as appears from ſeveral treatiſes of that period*.

In

* See Fritchius *de Abuſibus Typographiæ tollendis*, §. 2. par 4. and alſo his Treatiſe *de originali ac naturali libertate commerciorum neceſſaria et legibus munienda, Cap.* 10. which is intitled, *Quæ et quatenus Monopolia ſunt licita*, towards the end. That ſuch grants were conſidered in England as monopolies, appears from the ſtatute againſt monopolies, 21 Jac. I. cap. 3. ſect. 8. which provides, that the act ſhall not extend to any patents of privilege concerning printing or the making of ordnance, &c. By 1mo Rich. III. c. 9 (which reſtrains aliens from uſing any handicrafts, except as ſervants to natives, it is provided that they may import printed or written books, to ſell at their pleaſure. This was repealed by 25to Henry VIII. c. 15. upon a narrative,

In Britain, literary property was taken under the conſideration of the Legiſlature, and an act was paſſed to regulate it, which comes next to be conſidered; and for that purpoſe it will not be improper, that the procedure in Parliament, previous to the enactment, be laid before the reader, as recorded in the Journals of the Houſe of Commons.

12th December 1709, " A petition of " Henry Mortlock, &c. on behalf of themſelves, and other bookſellers and printers " about the city of London, and elſewhere, was preſented to the Houſe and " read; ſetting forth, That it has been the " *conſtant uſage* for the writers of books " to ſell their copies to bookſellers, or printers, to the end they might hold thoſe copies *as their property*, and enjoy the profit " of

tive, that it had been enacted, becauſe there were few printers in the realm at the time, but that now there were many cunning and expert in that ſcience or craft, as alſo many that lived by the craft and myſtery of bookbinding.—This act likewiſe provides, that the prices of books exceſſively rated, ſhall be qualified by the Lord Chancellor and others.

" of making and vending impreſſions of " them: yet divers perſons have, of late, " invaded the properties of others, by re- " printing ſeveral books without their con- " ſent, and to the great injury of the pro- " prietors, even to their utter ruin, and the " diſcouragement of all writers in any uſe- " ful part of learning; and praying, That " leave may be given to bring in a Bill, for " ſecuring to them the property of books " bought and obtained by them.

" Ordered, That leave be given to bring " in a Bill according to the prayer of the " ſaid petition; and that Mr Wortley, Mr " Compton, and Mr Pyton, do prepare and " bring in the Bill."

Here it is to be obſerved, that the narrative of this petition differs from the ſubſumption; and that the firſt is juſtly and accurately expreſſed, the other not ſo. The narrative does not alledge, that, at common law, the authors, or bookſellers, who purchaſed from them, had any right of property; but only ſets forth, that there had been a conſtant uſage of ſelling books, to be held

as a property; which is a plain acknowledgment by the petitioners themſelves, that there was here no real right of property, but only ſomething which they had been pleaſed to view as a ſort of property, or compare to a real property. But the ſubſumption immediately infers from this, that they actually had a real property, intitled to the protection and aid of the law, which, however artful, is plainly inconſiſtent and inconcluſive.

11th January 1709. "Mr Wortley, according to order, preſented to the Houſe, "a Bill for the Encouragement of Learning, "and for *ſecuring the property of copies of "books to the rightful owners thereof;* and the "ſame was received, and read the firſt time.

"Reſolved, That the Bill be read a ſecond time."

14th January 1709. "Ordered, That the "Bill for Encouragement of Learning, "and for ſecuring the property of the co-"pies of books to the rightful owners there-"of, be read a ſecond time upon Thurſday "morning next."

Fur-

Further conſideration of this bill lay over till the 2d of February 1709; when

" A petition of the poor diſtreſſed Print-
" ers and Bookbinders, in behalf of them-
" ſelves, and the reſt of the ſame trades, in
" and about the cities of London and Weſt-
" minſter, was preſented to the Houſe and
" read; ſetting forth, That the petitioners
" having ſerved ſeven years apprenticeſhip,
" hoped to have gotten a comfortable live-
" lihood by their trades, who are in number
" at leaſt 5000; but, by the liberty lately
" taken of ſome few perſons printing books
" to which they have no right to the co-
" pies, is ſuch a diſcouragement to the book-
" ſelling trade, that no perſon can proceed
" to print any book without conſiderable
" loſs, and conſequently the petitioners can-
" not be employed; by which means the pe-
" titioners are reduced to very great poverty
" and want; and praying, That their de-
" plorable caſe may be effectually redreſſed,
" in ſuch manner as to the Houſe ſhall ſeem
" meet.

" Ordered, That the petition do ly upon
" the

" the table until the Bill for Encouragement
" of Learning, and for ſecuring the proper-
" ty of copies of books to the rightful own-
" ers thereof, ſhall be read a ſecond time.

" Ordered, That the Bill be read a ſecond
" time, upon Saturday morning next."

Here the poor Printers and Bookbinders are introduced *in forma pauperis*, to revive and ſecond the petition of Meſſrs. Mortlock, Tonſon, and other rich London bookſellers, which ſeems to have been neglected. It will not eſcape notice, that the fact upon which this petition reſts, does, by no means, infer the concluſion: for, how ſhould the printing of books make Printers or Binders want employment, and reduce them to poverty?

4th February 1709. " Ordered, That
" this Bill be read a ſecond time, upon
" Thurſday morning next."

9th February 1709. The Bill was read a ſecond time. It was ordered, That the Bill be committed.

" Re-

" Reſolved, That the Bill be committed " to a committee of the whole Houſe.

" Reſolved, That this Houſe will, upon " this day ſe'ennight, reſolve itſelf into a " committee of the whole Houſe upon the " ſaid Bill."

16th February 1709. " Reſolved, That this " Houſe will, upon Tueſday morning next, " reſolve itſelf into a committee of the whole " Houſe, upon the Bill for Encouragement," &c.

21ſt February 1709. " The Houſe re- " ſolved itſelf into a committee of the whole " Houſe, upon the Bill for Encouragement, " &c. Mr Speaker left the chair. Mr Comp- " ton took the chair of the committee. Mr " Speaker reſumed the chair.

" Mr Compton reported from the ſaid " committee, That they had gone through " the Bill, and made ſeveral amendments, " which they ordered him to report, when " the Houſe were pleaſed to receive the " ſame.

" Or-

" Ordered, that the report be received " upon Saturday morning next."

25th February 1709. " Mr Compton, " according to order, reported from the " committee of the whole Houſe, to whom " the Bill for Encouragement, &c. was " committed, the amendments they had " made on the Bill, and he read the ſame " in his place, and afterwards delivered " them in at the clerk's table, where they " were once read throughout, and then a " ſecond time one by one; and, upon the " queſtions ſeverally put thereupon (with " amendments to ſome of them,) agreed " unto by the Houſe. A clauſe was offered " to be added to the Bill, that if any per- " ſon ſhall incur the penalties of the act in " Scotland, they ſhall be recoverable in the " Court of Seſſion there; and the ſame was " twice read: and upon the queſtion put " thereupon, agreed unto by the Houſe to " be made part of the Bill; and ſome other " amendments were made by the Houſe.

" Ordered, that the Bill, with the amend- ments, be engroſſed."

14th

14th March 1709. "An ingroſſed Bill "for the Encouragement of Learning, by "*veſting the copies* of printed books in the "authors or purchaſers of ſuch copies, du- "ring the times therein mentioned," was read the third time. "An amendment was "propoſed to be made to the bill, *pr.* 3. *l.* * "to leave out "refuſed;" and, inſtead "thereof, to inſert "refuſing:" and the "ſame was, upon the queſtion put there- "upon, agreed unto by the Houſe, and the "bill thus amended at the table accord- "ingly."

"Reſolved, that the bill do paſs, *and that* "*the title be*, a Bill for the Encouragement "of Learning, *by veſting the copies* of print- "ed books in the authors or purchaſers of "ſuch copies, during the times there men- "tioned.

"Ordered, that Mr Compton do carry "the bill to the Lords, and deſire their "concurrence thereunto."

Here it is material to obſerve, that the title given to the bill when ingroſſed, and

the title the Houſe reſolved it ſhould bear, when they paſſed it, is extremely different from the title the bill had when preſented by Mr Wortley (11th January) and till it was ingroſſed: for the title it had, when preſented by Mr Wortley, and till its ingroſsment, was, "A Bill for the Encouragement "of Learning, *and for ſecuring the property* "of copies of books to the *rightful owners* "thereof:" Which plainly ſuppoſes, and implies, that the authors or purchaſers of books, had, *ab ante*, a rightful property in the copies; whereas the title given to the bill, when ingroſſed and paſſed, *viz.* "A "Bill for the Encouragement of Learning, "by *veſting* the copies of printed books in "the authors or purchaſers of ſuch copies, "during the times therein mentioned," as plainly ſuppoſes and implies, that the authors, or purchaſers, had no right of property but what was veſted by this act, and would have none after the time mentioned therein ſhould expire.

4th April 1710. The Houſe proceeded to take into conſideration the amendments made by the Lords to the Bill, intituled, "An

" An Act for the Encouragement," &c. and the ſame were read, and are as follow:

The firſt four amendments being of no conſequence, it is needleſs to inſert them.

The next is, " Leave out from allowed to provided;" that is the proviſo intended to prevent exorbitant prices. All the other amendments were likewiſe of no conſequence, except the following proviſo, propoſed to be added to the end of the bill; which is as follows:—" Provided always, That af-
" ter the expiration of the ſaid term of four-
" teen years, the ſole right of printing, or of
" diſpoſing of copies, ſhall return to the au-
" thors thereof, if they are then living, for
" another term of fourteen years."

All the amendments were agreed to, except that reſpecting the prices.

Ordered, That a committee be appointed to draw up reaſons to be offered to the Lords at a conference, for diſagreeing to the ſaid amendment; and it was referred to Mr Secretary Boyle, and ſeveral others (of whom

Mr Addiſon was one) who were ordered to withdraw immediately into the Speaker's Chamber, and report to the Houſe.

Mr Compton reported from the Committee, that they had drawn up reaſons, which he read in his place, and afterwards delivered in at the clerk's table, and are as follow:

"The Commons diſagree to your Lordſhips' "amendments in *pr.* 3, *l.* 14. *Firſt*, Becauſe "authors and bookſellers having the ſole "property of printed books *veſted in them* "*by this act*, the Commons think it reaſon-"able, that ſome proviſion ſhould be made, "that they do not ſet an extravagant price "on uſeful books. *2dly*, Becauſe the pro-"viſion made for this purpoſe, by the ſta-"tute 25th Henry VIII. chap. 15. having "been found to have been ineffectual, and "not extending to that part of Great Bri-"tain called *Scotland*, it is neceſſary to make "ſuch a proviſion as may be effectual, and "which may extend to the whole united "kingdom.

"Ordered, That Mr Compton do go to "the Lords, and deſire a conference with "their

" their Lordſhips, upon the ſubject-matter " of the amendments made by their Lord- " ſhips to the ſaid Bill."

" Same day, Mr Compton reported, That " they had been at the conference, and " that they had given the Lords the rea- " ſons for diſagreeing to the ſaid amend- " ment."

A meſſage from the Lords, by Sir Robert Legard, and Mr Fellows:—" Mr Speak- " er, the Lords do not inſiſt upon their " amendment to the Bill, intituled, " An " Act for the Encouragement," &c.; and " then the meſſengers withdrew."

The clauſes of the Act, which it is neceſſary to attend to in this queſtion, are theſe:—

" Whereas Printers, Bookſellers, and other " perſons, have, of late, frequently taken the " liberty of printing, reprinting, and pub- " liſhing, or cauſing to be printed, reprint- " ed, and publiſhed, books, and other writ- " ings, without the conſent of the *authors or* " *proprietors* of ſuch books and writings,

" to

" to their very great detriment, and too of-
" ten to the ruin of them and their fami-
" lies; for preventing therefore ſuch prac-
" tices for the future, and for the encou-
" ragement of learned men to compoſe and
" write uſeful books, be it enacted, That,
" from and after the 10th of April 1710,
" the author of any book or books already
" printed, who hath not transferred to any
" other the copy or copies of ſuch book or
" books, ſhare, or ſhares thereof, or the
" bookſeller or bookſellers, printer or print-
" ers, or other perſon or perſons, who hath
" or have purchaſed or acquired the copy
" or copies of any book or books, in order
" to print or reprint the ſame, ſhall have
" the *ſole right and liberty* of printing ſuch
" book and books, for the term of one and
" twenty years*, to commence from the ſaid
" 10th of April, *and no longer;* and that the
" author of any book or books already com-
" poſed,

* Here it appears plainly, that all monopolies of books that had been printed prior to 10th April 1710, were, by this ſtatute, reſtricted to twenty-one years after that period, which cuts off all claims of right by common law.

" poſed, and not printed and publiſhed, or " that ſhall hereafter be compoſed, and his " aſſignee or aſſigns, ſhall have the *ſole liber-* " *ty of printing and reprinting* ſuch book and " books, for the term of fourteen years, to " commence from the day of the firſt pub- " liſhing the ſame, *and no longer.*" Then follow the penalties on tranſgreſſors of the act, and proviſos for entering in Stationers-hall, preſenting copies to the Univerſities, and regulating the prices. " Provided, That no- " thing in this act contained ſhall extend, " or be conſtrued to extend, *either to prejudiſe* " *or confirm* any right that the ſaid Univer- " ſities, or any of them, or any perſon or " perſons have, or claim to have, to the " printing and reprinting any book or co- " py already printed, or hereafter to be " printed: Provided always, that after the " expiration of ſaid term of fourteen years, " the ſole right of printing or diſpoſing of " copies *ſhall return* to the authors thereof, " *if they are then living*, for *another* term of " fourteen years*."

As

* It is clear, by this clauſe, that if the author dies within fourteen years after publication, the monopoly ceaſes at that

As this Act expreſsly declares, that authors, Printers, and Bookſellers, ſhall have the *ſole* right and liberty of printing for a certain number of years, and *no longer*, it ſurely would, to common reaſon, appear extremely plain, that, after that certain number of years was elapſed, they had no ſole and excluſive right, but that afterwards any perſon might print who thought proper. But the London Bookſellers, ſome time ago, whoſe great ſtocks, and reſidence in the capital, had enabled them to purchaſe all the books of any reputation that have been written in this country, though they had made immenſe ſums by the excluſive right of printing theſe books during the time mentioned in the ſtatute, were not content, but grudged to others the gleanings of a harveſt by which they had been enriched; and therefore reſolved, if poſſible, to vindicate to themſelves a perpetual right of monopoly.

With

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that period, as his being alive after that time is made an expreſs condition for continuing the monopoly for fourteen years longer. This ſhews alſo, there is no right at common law.

With this view, they thought proper to maintain, that an author, or bookſeller, who purchaſed from him, had, at common law, independent of, and antecedent to the ſtatute, a right of property that gave them an excluſive privilege to print and ſell:—that the ſtatute was not a reſtrictive, but an accumulative law, which did not create a new ſpecies of property, but ſecured, by penalties, a property that exiſted before. And, upon this principle, they claimed a right of monopoly in the works of Milton, Shakeſpeare, and many other authors, who had been dead more than eighty or a hundred years before; and inſiſted, that it was competent for them, without the aid of the ſtatute, by the interpoſition of the ordinary courts of juſtice, to reſtrain others from printing books of which they claimed the property, and to make them liable in damages in caſe they had printed ſuch books: accordingly, they have attacked, at different times, ſeveral bookſellers, both in England and Scotland. But it is remarkable, that they have never once attempted to call the bookſellers of Ireland to account, tho' they have ſuffered moſt by them; which

ſeems to indicate, that they themſelves have no faith in this new doctrine, of a right at common law, which muſt have ſupported them equally in Ireland as in Britain, tho' the ſtatute of Queen Anne could not reach that country.

In oppoſition to this their doctrine, it is the object of this paper to ſhew, that, *at common law*, there is no ſuch thing known as an excluſive perpetual literary property in an author after publication.

The general queſtion, with reſpect to this right of literary property, is commonly ſaid to be, Whether an author has an incorporeal right to the ſole printing and publiſhing of ſomewhat intellectual, communicated by letters*? But this ſtate of the queſtion is really defective, and does not take ſo comprehenſive a view of the ſubject as one ought to do in conſidering this important point; or make way for all the equity that ought and muſt be

* See Burrow's Reports.

be given by a deciſion in favour of literary property, in the true ſenſe and meaning of that expreſſion.

The queſtion ſhould be rather ſtated thus, Whether the author of an intellectual compoſition has the ſole and excluſive right of communicating it to others?

If the queſtion be confined to intellectual compoſitions, then muſical muſt doubtleſs be excluded; and yet the compoſer of a Solo, or Concerto, has as good an excluſive right to his piece of muſic, as the author of a book. Beſides, if the queſtion be confined to ſomething intellectual, communicated by letters, then arithmetical, mathematical, and algebraic compoſitions will be excluded, as theſe are not communicated entirely by letters, which are the ſigns of ſounds, but by marks that ſtand for ideas.

In order to get at the bottom of this matter, it will be neceſſary to conſider the different kinds of mental compoſitions, and the different modes of communicating them. A muſical compoſition is mental, but not in-

tellectual. It is communicated by ſounds, or by ſigns that ſtand for ſounds. A good muſician, when a piece of written muſic is put into his hands, will, merely by reading, without playing it, underſtand it perfectly, and perceive whether it be good or bad Muſical compoſitions are not literary, either in the proper or metaphorical ſenſe of the word. No compoſition is underſtood to be literary but what is intellectual; but muſical compoſitions are not intellectual, for they do not excite ideas in the hearer, but only ſenſations: yet the compoſer of theſe is, in reaſon and equity, equally well intitled to an excluſive right of communicating them to the world as the writer of a book.

With reſpect to intellectual compoſitions, o recombinations of ideas, they may be publiſhed; that is communicated to others in different ways, according to the nature of the compoſition. Some combinations of ideas may be communicated by geſtures.—This is the caſe in pantomimic entertainments; which are regular pieces, having a plot, a beginning, a middle, and an end; ſo that there is no reaſon why the author of ſuch

ſuch a piece ſhould not have the ſame privilege with any other literary writer. Indeed ſome ideas may be communicated by geſtures that cannot by words: hence it has been ſaid, that, on certain occaſions, one may look "unutterable things."

A combination of ideas may alſo be communicated by figures or pictures; and this, we are told, was the moſt ancient way of writing*. When the Spaniards anchored in the Gulph of Mexico, the people, on the coaſt, ſent the news of their arrival to Court in writing; but that writing was a drawing of the ſhips and men†. We have many modern publications of great merit, that communicate ideas in a ſimilar manner; ſuch as Hogarth's engravings, which are as noble ſatires as thoſe of Horace or Juvenal; and the combinations they expreſs may be communicated in proſe or in verſe.

A com-

* See Warburton's Div Leg. vol. III. p. 75.

† See Recherches Philoſophiques ſur les Americaius, tom 2. p. 204.

A combination of ideas, too, may be communicated by things. This is the caſe with machines; the moſt proper way of giving a deſcription of which is by models, or by putting the component parts of the machine together. The principles of its conſtruction may be communicated in a ſtill leſs perfect manner by drawing, or, in the moſt imperfect manner of all, by deſcription in words. This laſt is admitted to be a literary compoſition, and, conſequently, the inventor is allowed to have an eternal property in this the moſt imperfect mode of deſcribing the organization of the machinery: and yet no property is allowed in the moſt perfect communication poſſible, which is the model or exhibition of the machine itſelf.

Laſtly, a combination of ideas may be communicated by particular marks, which men have agreed ſhall ſtand for the ſigns of ſounds. Poems can only be communicated in this way, becauſe they participate of muſical compoſition; conſequently, ſound is their eſſence, and therefore they cannot be communicated by geſture, repreſentation, or figures.

All

All theſe different combinations are mental productions in reality: when publiſhed, they convey to mankind particular ſentiments, and afford information, or inſtruction of ſome kind or other; therefore, if there be property in one, there ſhould be property in all; for there is, properly ſpeaking, a combination of ideas, and great labour of mind, in all ſuch compoſitions. But the advocates, for an excluſive right of property, only allow it to exiſt where the combination of ideas is communicated by letters, not in engravings or machines; although it is plain there is labour and invention in all, and conſequently the ſame equitable common-law claim. Accordingly, the Legiſlature itſelf has conſidered literary property in this point of view: for engravers have, by ſtatute, the ſame privileges as authors, and mechanics are almoſt always indulged with the privilege when a patent is applied for. Indeed, the moſt plauſible argument for literary property applies to them all indiſcriminately, viz. the protection of the invention before publication: for it is impoſſible to make a rational diſtinction between the caſe of a machine and a book. The former

owes

owes its birth to much thought, invention and labour, as well as the latter; and a monopoly of the one is of as much conſequence to the compoſer as that of the other.

It has been maintained on the other ſide, that the principles of a machine are general, thoſe of a book particular. This diſtinction is certainly not very intelligible, and, unfortunately, proves too much; for, in this way, arithmetic, algebraic, and mathematical compoſitions, would be excluded; which are, unqueſtionably, literary, and indeed the moſt uſeful of any.

It has alſo been argued, that he who copies a machine does it in conſequence of a knowledge acquired from ſeeing the original model; but that he who reprints a book, does not do it from any knowledge acquired from the work itſelf, but by a mere mechanical operation. Suppoſing it to be true, that a machine could not be copied but by a perſon who underſtood the theory of it, which is certainly not the caſe, the difference pointed at is immaterial. Every man has a right to uſe the knowledge he fairly acquires.

acquires. If he has got the knowledge of the art of printing, why may he not uſe it in reprinting an author's book, although he may not have obtained his knowledge of printing from ſuch book, as the author has ſurely no buſineſs in what way the printer has acquired this art? It is conceived, an author's claim to an excluſive property in his ideas muſt reſt upon his invention and labour; upon his own merit, not on that of another. Now, it is plain, that the title upon which he founds may be claimed, with equal juſtice, by the inventors of a machine.

It has, with apparent plauſibility, been maintained, that a machine made by one man is not the ſame invention with a machine made by another; whereas, the copy of a book reprinted is preciſely the ſame original performance. It is certainly true, that a model of a machine, made by the purchaſer, cannot, phyſically, be the ſame with that made by the inventor; but it is the ſame for all the purpoſes intended, and the execution of it required the ſame mechanical powers and labour. It may, indeed, be better or worſe made; but the idea

of goodneſs or badneſs in the execution of the work is excluded by the ſtate of the queſtion.

As to combinations communicated by engravings, it is obvious they likewiſe are the production of invention and labour. All theſe different compoſitions ſtand upon the ſame footing; and as an excluſive property is only held to exiſt in one of them, hence I infer there is property in none of them. It is either unlawful to interfere with any, or it is lawful to interfere with all of them.

It has been aſſerted in ſome of the arguments on literary property, that an author has not only an excluſive right to the thoughts themſelves, but to the ſtile and mode of expreſſing them. It is, however, not very obvious how he can have a right to the ſtile, except in ſo far as it excites ideas. For, ſurely, if a man ſhould throw together a multitude of Engliſh words without any connection, that would not be eſteemed a literary compoſition. It would, no doubt, excite ideas, for every word is itſelf an idea; but there would be no combination of them requiring

quiring invention and exertion of the mind on his part, conſequently he could have no excluſive right to them. No man, therefore, can have any property merely in words; it is only in ſo far as they communicate and combine ideas that he has an equitable claim to the excluſive right to the compoſition, as being the production of his labour and genius.

From this it ſeems to follow, that it is not material what the particular mode of communication be; ſo that if a man communicate all my ideas, though he uſe different words, this is clearly an invaſion of my property, and this leads to the queſtion, Whether tranſlations and abridgments of a work be violations of literary property? Tranſlations clearly communicate all the ideas of the author; and therefore in a queſtion with him, the tranſlator muſt be reckoned a violator of his property; altho', perhaps, in a queſtion between the tranſlator and one who printed his book, the latter might prevail. The ſame argument would be good in a queſtion between an author and his abridger.

The leading queſtion in all ſuch caſes is, Whether, at common law, a man can have the ſole and excluſive right of communicating a mental compoſition to others?

All the poſſible combinations of ideas are not infinite, although they are more numerous upon ſome ſubjects than upon others.—Upon ſpeculative ſubjects, they are limited and different. Men hit upon the ſame combinations, and entertain the ſame opinions as to them, in different parts of the globe, without any communication*. The ſame ideas have often occurred on metaphyſical ſubjects, mathematics, arithmetic, and the arts. It appears from the hiſtory of India, that the Philoſophers there have adopted all the ſyſtems, even the moſt whimſical of other ſages in different parts of the univerſe: nay, it is ſaid, that Paſchal, by the mere force of his own genius, demonſtrated, without aſſiſtance, the firſt thirteen Propoſitions of Euclid.

But

* See Recherches Philoſophiques ſur les Americans.—Part V. tom II. ſect. I. p. 188.

But though men will often hit upon the ſame combination of ideas in conſidering certain ſubjects, yet they will neceſſarily vary in their ſtile and mode of expreſſion; not only on account of the different ſtructure of languages in different nations, but becauſe in every language the various ways of combining words are ſo numerous, it is almoſt impoſſible two perſons ſhould, at any time, adopt the very ſame expreſſions. This, however, does ſometimes happen in mathematics and other abſtruſe ſciences; for, in theſe, words are not ſo often uſed as ſigns, and the nature of the ſubject, beſides, excludes any metaphorical expreſſions.

Combinations of fancy and fiction are vaſtly more numerous, tho' it is ſurpriſing that a greater number of original combinations have not made their appearance; and equally ſurpriſing, that the ſame thoughts and arguments have not often occurred to different people; hence it is from the want of invention, authors have too often borrowed their ideas from former writers. How much has Virgil borrowed from Homer?---How much Taſſo and Arioſto from both?---How much Milton

Milton from them all? But as they have written in different languages, the theft is not ſo perceptible; and, at the ſame time, each of them has very great merit on account of the fine verſification, for ſound itſelf is certainly the eſſence of poetry.

When a man combines ideas on any ſubject, it is clearly poſſible that another may be putting the ſame ideas together, if the ſubject be ſpeculative. When a man has combined ideas in his own mind, it may, no doubt, be ſaid, that he has occupied them; but it is plain that he cannot, on this account, prevent any other from doing the ſame thing; he cannot, by the mere combination in his mind, attain an excluſive poſſeſſion of the ideas combined. If, for inſtance, a man in America has formed the ſame combinations of ideas with a man in England, he has the ſame merit, he has exerted the ſame invention, and the ſame labour of mind, conſequently the one has juſt as good a title to claim the property of the thoughts as the other. When a man has combined ideas in his own mind, it is plain he has a power over them, a power to communi-

municate them to others or not as he thinks proper. It may be doubted if it can be properly ſaid he has a right to do ſo; for the word *right* involves the idea of legal interpoſition; whereas it is plain, that, as long as ideas remain in the mind, no law can create a right of property in them. However treaſonable a man's mere ideas may be, the law does not puniſh him for them, neither can it reward him, however noble and virtuous his ſentiments.

If a man write down ideas he has combined, as long as he keeps that writing in his own poſſeſſion he has no excluſive right to the thoughts contained in it: he has, indeed, as he had before, a power of communicating them to the world; but as long as he keeps them to himſelf he has no real property in them, the law cannot protect them, and it is plain he cannot hinder any other perſon to combine the ſame ideas, write them down, and publiſh them.

Compoſitions in proſe and verſe were known long before the art of printing or writing was diſcovered. Savages in different coun-

countries, where neither of theſe arts are known, have their love and war ſongs; and theſe amorous, or martial ditties, are certainly not compoſed in hopes of gain, but for amuſement and the love of fame. If one ſavage repeat his ſong ſo often to another, that the latter can, by attention, learn to repeat it, upon what principle of juſtice can the ſavage author complain of his neighbour for rehearſing it? If, indeed, he ſhould repeat it as his own compoſition, that, perhaps, might be complained of as ungenteel and ungenerous; but ſuch conduct could never, ſurely, be conſidered in any other point of view.

If it ſhall be ſuppoſed that a ſavage could derive profit from repeating his neighbour's ſong, the queſtion, Whether he could be complained of for doing ſo? would depend on a great variety of circumſtances. If, for example, he ſhould chant it at a great diſtance, and in a foreign country, which the compoſer might never ſee, perhaps never hear of, what injury does he ſuſtain? Nay, ſuppoſe his rehearſing it ſhould be attended with gain, where is the injuſtice in the repeater's reap-

reaping advantage from his memory as well as the author from his invention.

Even after the art of writing was introduced, no ſuch thing as what is called copy-money was for ſome time known; not until the art of printing was for ſome time diſcovered *. In ancient Rome we are informed it was expenſive to be an author †. It is clear, therefore, by the common law, before printing was introduced it would be conſidered as no injury done to an author to publiſh his works; on the contrary, he muſt have conſidered it as a very great favour if any perſon, by doing ſo, ſaved him the expence attending publication.

The argument for literary property then reſolves into this propoſition, that there is a common law right without any precedent; or in other, and perhaps better words, that in a refined ſtate of ſociety rights emerge which were not known in more uncivilized times, and which the law is now bound to protect.

* See Pliny's Epiſt. lib. 3.

† See Juvenal, Satire 7.

protect. It is ſaid too, that authors ſhould alone be entitled to reap the fruits of their labour, and all others ought to be prevented from interfering with them. The common law protects the copy before publication; therefore it is maintained it ſhould protect it afterwards, unleſs it can be held that, by publication, an author relinquiſhes the previous excluſive right he had acquired to the manuſcript; but that he does not mean to do ſo by ſelling a ſingle copy for a trifle: for it is contended he does not mean to transfer his right to deal in the trade of ſelling his book, but only a right of peruſal. And it is ſaid to be further fit that an author ſhould have an excluſive right of printing his work, in order that he may ſee it be correct, and that he may have an opportunity of altering or amending it. From all which it is inferred, that it is a moral wrong to publiſh another's work; and that it is juſt and fit he ſhould have an excluſive right to do ſo himſelf.

In anſwer to this ingenious argument it is maintained, that it is no doubt true there is a common law without precedent, as rights muſt,

muſt, from time to time, occur among civilized nations, and require the aid of law to protect them, which were not known in a ruder and more unpoliſhed ſtate of ſociety; and theſe ought to be made effectual, unleſs incompatible with the public welfare: for, with regard to ſuch rights, a Court of juſtice has, in ſome meaſure, a legiſlative power. Rights that have long had the ſanction of law, will not, without reluctance, be cut down on any occaſion, though a change in the ſtate of ſociety and manners of the people may perhaps render them ſomewhat hurtful. But rights that have no foundation in uſage or law may be rejected by Courts of juſtice, if repugnant to utility. But an excluſive right of property in authors is, unqueſtionably, a new right, and therefore may, with propriety, be rejected if prejudicial to ſociety *.

With regard to the property in the original copy of a book before publication, it is perfectly obvious that an author has a good title

* See Lord Kaimes's Principles of Equity, B. ii. chap. 2.

title to the excluſive property of his book before publication: for the author has, unqueſtionably, a complete right of property in the manuſcript, which is protected by the common law as a corpus under the dominion of the author. It is ſaid, however, that in England an action could not be ſuſtained to recover the manuſcript as being the property of the author. This perhaps may be the caſe in England; but in this country ſurely an action would be competent for recovery of manuſcripts as well as for any other property; and if they could not be recovered, an action of damages would undoubtedly lye, to what extent would depend on circumſtances.

But it is not the right in the thoughts and ſtyle that is protected in the manuſcript before publication; for a perſon may have a legal right to a manuſcript. to the ideas and ſtyle of which he has no right: for example, if one ſhould find a manuſcript containing the books of Livy that have hitherto been amiſſing, he has undoubtedly no right to the ſentiments or ſtyle; theſe are Livy's, not his; and yet it is thought he would

would have a legal right to the manuſcript before publication, and might get a warrant to ſearch for, and ſeize it wherever he could find it. If he could not recover it, he would be entitled to damages from the treſpaſſer who carried it off; and if the latter had printed it, and made profit by it, he would be obliged to account to the proprietor for the profits. This argument, therefore, with reſpect to a perſon's having a legal right to a manuſcript before publication, certainly proves too much; for it tends to prove, that I have a right, not only to my own ideas and ſtyle, but a property in the thoughts and ſtyle of another. An author's manuſcript is protected by the law before publication, not becauſe he has a right to the mere ſentiments and ſtyle, but becauſe, by writing down his ideas, he makes a combination of them, and brings them into ſuch a form, as to render them capable of becoming a ſubject of property; the paper manuſcript being a corpus or tangible ſubſtance, entitling the author to claim it as his property: for paper, by writing on it, becomes a different thing from what it was before, and therefore, upon a theft or robbery of it, the writer

writer ought, not only to have action for the paper, but for the ſpecification; and what ought to be the amount of damages on that account muſt be arbitrary.

It has been argued, that, ſuppoſing a man does not carry off a manuſcript by force or theft, but copies and publiſhes it clandeſtinely, and without the author's conſent, no action of trover or treſpaſs would lye on the common law in England, although he has deprived another of a valuable right. There can be no doubt that there ought to be a remedy in this caſe, and whatever difficulty the ſubtleties of the law of England may occaſion, there can be none in this country. Action would lye againſt him for delivering up the copy he had made; for, in having clandeſtinely copied the manuſcript without the proprietor's conſent, he was guilty of an illegal act, and on account of this illegal conduct of his, he muſt either reſtore the copy, or be liable in damages. In ſupport of this propoſition, we need only refer to the civil law, where it is expreſsly laid down in the title of the Inſtitutions "*de Ob-*
"*ligationibus que ex delicto naſcuntur, De-*
"*lictum*

" *lictum eſt factum illicitum ſponte admiſſum, quo* " *quis et ad reſtitutionem ſi fieri poſſit et ad pœnam* " *obligatur.*" The only complete reſtitution poſſible in ſuch a caſe as this, is reſtoration of the copy made, ſo that the proprietor may regain excluſive poſſeſſion; and if it cannot be reſtored, damages muſt be awarded on the principle, " *loco facti impreſtabilis* " *ſubit damnum et intereſſe.*" This argument likewiſe proves too much; for where a perſon copies a manuſcript in the poſſeſſion of another, though not compoſed by him, without his conſent, he deprives him of a valuable right, and he is, undoubtedly, entitled to have legal redreſs for any ſuch violation of his property, as much in the one caſe as in the other.

The reſult of the whole of the argument with reſpect to a perſon's right to the manuſcript ſeems to be, that, after an author has written down his ideas, he has a power of publiſhing them or not as he thinks proper; conſequently, he has a power of giving a priority of publication to whom he pleaſes; and whoever deprives him of that power, does him an injury, and muſt repair the loſs

loſs thereby occaſioned; of courſe, damages muſt be awarded as a ſolatium to the author: and, *in modum pœnæ*, of the treſpaſſer; but in ſuch a caſe, no incorporeal right is protected by the law; for it neither does nor can countenance ſuch a right. It has been ſaid, the law protects a man's fame and reputation; but fame and reputation are inherent in a perſon, and any attack upon the one or the other, only intitles the injured individual to reparation. Hence, no action of defamation, it is believed, would be ſuſtained in this Court, except in ſo far as it concluded for damages: for this Court would certainly have very great difficulty in ſuſtaining action againſt any perſon for depriving an author of mere literary fame; and if ſuch action ſhould be deemed competent, the deciſion would only prove that ſuch right is inherent in a perſon, not that there is an actual property in the mere ideas of an author.

As to the moral wrong, ſaid to be committed by perſons interfering with an author in the publication of his work, many caſes may be figured in which it would be very ungenerous and ungenteel to do ſo; in

in particular, it would be extremely unhandſome to preſume to publiſh a ſecond, and cheaper edition, immediately upon the publication of a book. But however improper this may be in a moral point of view, the queſtion ſtill is, Whether this be ſuch a wrong as the common law can prevent? for there are many acts, inconſiſtent with rigid morality, which the common law cannot poſſibly puniſh; *non omne, quod licet, honeſtum eſt.*"

Every man has a right to profit by his own knowledge. He who buys a book purchaſes every uſe to which it can be applied, and he has as good a right to profit by his knowledge of the art of multiplying it, as the author had by his ſkill in compoſing it.—The author's claim to a monopoly, until he be reimburſed of any expence incurred, or until he receive a proper recompence for his trouble, is but an imperfect right, which it may be ungenerous to interfere with, but which the common law cannot protect. The only remedy an author therefore has, is, to apply to the Crown for a patent, and that, all authors have, in fact, already obtained; for the act of Queen Anne

muſt be conſidered as a ſtanding patent to authors.

It may, no doubt, be ſaid, that the author's intention in publiſhing a book was to give to the purchaſer of a ſingle copy, a right of property to that individual copy, but no more. To this it is anſwered, that whatever is the neceſſary conſequence of an action, muſt be deemed intended by it. Now the neceſſary conſequence of printing and ſelling a book, is to make it common property; and no private bargain betwixt the author and book-ſeller, can prevent a purchaſer from making what uſe of his purchaſe he pleaſes. If, indeed, an author could ſhow that he ſold a perſon a copy from which he had reprinted, when it was an expreſs condition in the ſale that he ſhould not reprint; in that caſe, perhaps, action might lye upon the contract entered into between them: at the ſame time it is almoſt impoſſible, by any bargain or proviſo, to prevent every perſon purchaſing the book from reprinting it.

An author's entering his book in Stationer's Hall, no doubt, has this effect; but this is ſolely

ſolely *vi ſtatuti*, not in conſequence of his having any common-law right of property in the book.

This refined idea of literary property is ſurely inadmiſſible in a Court of Juſtice, as it renders judges arbitrary in all queſtions coming before them. Since then no general rule can be laid down for the determination of ſuch queſtions, this of itſelf ſhows, that there is no ſuch thing at common law as literary property; for ſurely no right in equity can exiſt, that cannot be aſcertained by general rules*.

Beſides, this pretended right in authors, is inadmiſſible in another point of view, as being incompatible with the common rights of mankind, and other regulations of law.

The Legiſlature, indeed, may create any right it pleaſes, however anomolous; but the

* See Lord Kaimes's Principles of Equity, p. 10. Edin. 1760.

common law will adopt nothing that is inconſiſtent with the general principles of juſtice and utility; it will admit of no right that is inconſiſtent with its firſt principles and general rules. But this claim of authors to an excluſive right of property in a book after publication, is highly inexpedient, as it both gives a right of ſuppreſſion, and confers a power of extortion. *2dly*, It is impoſſible to aſcertain or define it; and a multitude of inextricable diſputes muſt continually ariſe from it. *3dly*, It cannot be tranſmitted in the way in which property is tranſferred, or affected by the legal diligence of creditors. *4thly*, This anomolous right is an encroachment upon the natural liberty of mankind.

It does not follow, that becauſe the Crown has a clear right to the ſole excluſive publication of Acts of Parliament, that every author has an excluſive right of property in his book after it has been publiſhed. The reaſon for giving the Crown an excluſive right to print Acts of Parliament is, that they muſt be promulgated; which was at firſt done by proclamation, and now by printing.—

As

As the State is materially intereſted in the publication of ſtatutes, it is neceſſary that there ſhould be an excluſive right to print them veſted in the Crown, that they may be accurately publiſhed; beſides, there muſt be a copy which will bear faith in judgment. For the ſame reaſon, the Crown has an excluſive right to the printing of Bibles; becauſe the Bible, too, is a rule of conduct for the ſubject, and ſtrange conſequences might follow if incorrect editions of the Sacred Text were allowed to be publiſhed.

With regard to the Act of Queen Anne, it does not appear that any injunctions were granted in Chancery before it, and the injunctions after it do not ſhow that the Chancellor thought authors had a property in their works at common law, but only that he thought the ſtatute veſted a property, or right; and that a common-law action lay for damages on the ſtatute, and not merely an action for penalties. This opinion ſeems to be ſupported by every principle of juſtice; for, when a ſtatute creates a right, for every violation of that right there muſt be a remedy: he who tranſgreſſes the ſtatute commits

commits a wrong, and muſt repair any damage ſuſtained by ſuch tranſgreſſion. The ſuperadding penalties againſt offenders neither did, nor could mean to annul, the preceding clauſe which creates the right; ſo that it is clear, although there was no ſuch thing as literary property before the ſtatute at common law, yet there being ſuch a property created by this act, an author is entitled, upon any violation of it, to ſue for damages at common law, as well as for the penalties ſpecified in the ſtatute.

The general concluſion to be drawn from what has been ſtated, ſeems to be, with regard to the property claimed at common law, independent of the ſtatute, that the moſt plauſible argument, offered on the part of the Bookſellers, is, that when an author has beſtowed much time and labour in compoſing, and expended great ſums, perhaps his whole ſtock, in printing and publiſhing an edition of a book, it is manifeſtly unfair and unjuſt, that another, the firſt day that the work is publiſhed, ſhould purchaſe a ſingle copy, and ſet about a cheaper edition, by which he not only intercepts

tercepts the profits the author would have drawn, but brings upon him a certain and ruinous loſs, by ſtopping the ſale of the copies he had thrown off: that the author has evidently a right to prevent this; and wherever there is a right, there muſt be a remedy, and a remedy in courſe of common law or equity.

That the author of a book, or of a machine or an art uſeful in life, has an equitable title to inſiſt, that he ſhould have the excluſive right of ſelling his work for ſuch a length of time, as ought to reimburſe him of his expence, and recompence him for his trouble, is indiſputable; but it by no means follows, that this right ought to be inforced by the ordinary Courts of juſtice. The poor have a moſt equitable title to demand maintenance from the rich; but it was never imagined that, independent of any ſtatute, they could have brought actions before Courts of law or equity, for eſtabliſhing rates upon the rich, ſufficient to ſubſiſt them. Courts of juſtice can only interpoſe their authority to make perfect rights effectual, not imperfect ones, as all thoſe juſt

now

now mentioned evidently are, as well as many others ariſing from the obligations of friendſhip, gratitude, and benevolence. When a man has diſcovered any uſeful theory in mathematics, or in any other ſcience, it is ungenteel and ungenerous in any other to aſſume the honour of the invention to himſelf, or falſely aſcribe it to any but the true author: yet it ſurely cannot from that be inferred, that the true author could bring an *actio injuriarum*, or of ſcandal and defamation, againſt any perſon who ſhould falſely aſſert that it was either his own or another's. In the ſame way, it may perhaps be ungenteel and ungenerous to interfere with an author, in the trade of printing and ſelling his book; but it is not therefore a conſequence, that the author will have a right to bring either a civil proceſs for damages, or a criminal one for robbery or theft. The circumſtance of his having been at much pains in compoſing, and at great expence in printing his book, may give him an equitable claim, for having a temporary excluſive right conferred upon him; but it never can *ipſo facto* eſtabliſh a perpetual property in him. The proper remedy, therefore,

fore, is an application to the ſupreme magiſtrate, or legiſlature of the country, for a privilege; and accordingly that was the method conſtantly followed before the ſtatute paſſed, and it is the only one yet purſued in foreign countries, whoſe lawyers have no notion of an excluſive right in authors at common law.

With regard to the act of Queen Anne, it was evidently intended to be a general ſtanding patent, as Lord Hardwicke called it, to authors and bookſellers, and to ſave them the trouble and expence (from 80 to 100 l.) of applying to the king for a privilege every time they printed a new book: at which time, it is often uncertain whether the profits would pay that expence.

The writers for the bookſellers argue, that it appears the legiſlature underſtood, that authors, and thoſe who purchaſed from them, had a property antecedent to the ſtatute, becauſe the preamble of that ſtatute ſets forth, that a liberty had been taken of printing, reprinting, and publiſhing, books and other writings, without the conſent of the *Authors*

or Proprietors; which, it is ſaid, ought not to be reckoned a mere inaccuracy of expreſſion, becauſe " the ſentiment neceſſarily " ſuppoſes, that they uſed the word *Proprietors* in its ſtrict and exact ſignification, " it being a repreſentation of the bad effects " from the liberty taken of printing and " reprinting books, without the conſent of " their authors, or their aſſigns *."

The expreſſion here founded upon, is palpably an inaccuracy, owing to the inaccurate expreſſion in the petition from the bookſellers and others, which procured the act, and is partly tranſcribed into its preamble. The bad effects, mentioned in this act, are the diſcouragement of learned men, and loſs they had ſuſtained. Theſe might afford a good reaſon for *veſting* the property in them, but not for holding, that they had *ab ante* a property.

The ſenſe of the legiſlature upon this point

* See the Letter to a member of Parliament, on this ſubject, publiſhed in 1747.

point is not to be gathered from an expreſſion in the preamble; and that it lay quite the other way, is apparent from the amendment made upon the title of the act. From the hiſtory of the procedure in Parliament, it is plain, that the act was obtained by the bookſellers: the bill, no doubt, would be drawn by gentlemen in their intereſt: accordingly the title firſt given to the bill, as has been already obſerved, ſuppoſed and implied, that authors and purchaſers from them had, *ab ante*, a property in their books; but this title was amended and altered, before it was engroſſed, in ſuch a manner as to ſuppoſe and imply the direct contrary. It was then entitled, "An Act for the Encouragement of Learning, by *veſting*," &c. This alteration ſufficiently indicates the ſenſe of the legiſlature, and cannot be oppoſed by an expreſſion in the preamble, which was not corrected, either becauſe it was not adverted to, or becauſe it was not thought capable of the conſtruction the bookſellers put upon it.

The writers for the bookſellers lay hold likewiſe of a proviſo in the concluſion,

" That nothing in this act contained, ſhall " extend, or be conſtrued to extend, ei- " ther to prejudiſe or confirm any right " that the ſaid Univerſities, or any of them, " or any perſon or perſons, have, or claim " to have, to the printing or reprinting any " book or copy already printed, or hereaf- " ter to be printed." They admit, that one purpoſe of this proviſo was, to leave undecided all claims to excluſive printing, from patents, licences, &c. But they contended, that " the large wording of it appears to " have a particular aim at obviating ſuch " miſconſtruction of the ſtatute; as if the ad- " ditional temporal ſecurity, thereby given, " either implied, that there was no right of " property before, or elſe abrogated what it " found*."

But it is obvious, that if the words of this proviſo are interpreted to mean any more than a *Salvo* upon all patents, licences, &c. (ſuch as law-printers, king's printers, &c.) they muſt operate as a repeal of all the preced-

* See the Letter to a Member of Parliament.

ceding clauſes; for the bookſellers ſurely will not deny, that this law was paſſed, in order to confirm, by penal ſanctions, the rights of authors and bookſellers.

But what renders the queſtion entirely inſignificant, whether the legiſlature underſtood authors and bookſellers to have *ab ante* a right of property,—as alſo the argument for the bookſellers, that "the act eſtabliſheth "no right, but takes up a right already eſta-"bliſhed, which it guards by additional pe-"nalties *," is, not only the title of the act, which eſtabliſhes and veſts a right, but the enacting clauſe, which ordains, that authors of books, or purchaſers from them, ſhall, in one caſe, "have the ſole right and liberty "of printing ſuch book and books, for "the term of one and twenty years, to com-"mence from the ſaid 10th day of April, *and* "*no longer*." In another caſe, "that they "ſhall have the ſole liberty of printing and "reprinting ſuch book and books, for the "term

* See a Vindication of the Excluſive Right of Authors, written in 1762.

" term of fourteen years, to commence " from the day of the firſt publiſhing the " ſame, *and no longer:*" And, " That, after " the expiration of the ſaid term of four- " teen years, the ſole right of printing or " diſpoſing the copies *ſhall return* to the au- " thors thereof, if they are *then living*, *for* " *another* term of fourteen years."

Suppoſing authors to have had a right of property antecedent to the act, yet it cannot be diſputed, that the Legiſlature could annihilate it altogether, or new-model and abridge it at pleaſure. The Legiſlature has, in the moſt explicit terms, declared, that authors, and purchaſers from them, ſhall have the ſole right of printing their books for a certain term of years, and *no longer;* which is the ſame thing with expreſsly declaring, that, after that period of years, other perſons ſhould have the right and liberty of printing books as well as they, though it does not exclude them from printing in common with others. Though authors, and thoſe in their right, had a perpetual right of property in their books, yet there was no iniquity in rendering it temporary by this act,

on

on account of the ſevere forfeitures and penalties, by which their right is protected for a long tract of time, during which, if their books are good for any thing, they will draw much more than ſuffices to reimburſe and recompence them: and it ought not to eſcape obſervation, that authors have never ſhown any diſſatisfaction with the regulations of this ſtatute, a junto of bookſellers only have complained of it.

It only remains further to be ſuggeſted, that every conſideration of public utility ſtrongly oppoſes the perpetuity claimed by the bookſellers, which, ſuppoſing the queſtion to be embarraſſed with any doubt or difficulty, ſhould turn the ſcale againſt them.

The moſt curſory reflection muſt ſatisfy every perſon,

1ſt, That the perpetuating a monopoly of books, though it will tend to enrich and aggrandiſe about half a dozen of bookſellers will, at the ſame time, depreſs and diſcourage all the other bookſellers and printers in the kingdom.

2dly,

2*dly*, That it will occaſion ſlovenlineſs, inelegance, and incorrectneſs in printing.

3*dly*, The limiting the monopoly of books, and opening a larger field for the art of printing, would greatly increaſe the revenue ariſing from the conſumption of paper.

Laſtly, The perpetuating the monopoly of books muſt, inevitably, enhance their prices beyond all bounds; the infallible conſequence of which is, to retard, and, indeed, ſtop altogether the progreſs of learning.—This has been complained of as the conſequence of patents and privileges, from their firſt introduction; and that there is as much reaſon, if not more, for exclaiming againſt that abuſe at preſent, as formerly, muſt be felt by every man, who is deſirous of having a tolerable library of books, and is not poſſeſſed of a moſt opulent fortune.

Of Impartiality.

AMONG the many who have attained an eminence of reputation, much ſuperior to what their talents and exertions deſerved, Solon, as the political legiſlator of Athens, may, with reaſon, be numbered; for he declared, that he had given the Athenians, not the laws which were beſt in themſelves, but the beſt laws they were capable of receiving.--- Now this lawgiver of great genius, has always prevailed on his people to embrace what ſyſtem he judged to be moſt conducive to their welfare, and framed it with ſuch art and ſagacity, as if requiſite, either totally, or at leaſt in a great meaſure, to change their character, and new-model their manners; witneſs Moſes, Lycurgus, Numa, and eſpecially Orpheus.

DICTUS AB HOC LENIRE TIGRES RABIDOSQUE LEONES.

Beſides, it is clear enough, that Solon did not give the Athenians even the beſt laws

they were capable of receiving. for the reign of his political laws was very ſhort, he himſelf lived to ſee them aboliſhed: thoſe of Moſes govern the Jews at this day.

Another, and indeed the chief proof of this poſition, is the law by which he ordains, under a ſevere penalty, every citizen to take a ſide when the State ſhall be divided into parties; his object (according to Plutarch) being to prevent a ſelfiſh apathy, and oblige men to take a part, and ſhare danger with the worthy. An enactment at once inconſiderate and unjuſt; for reflection on the nature of mankind, or recollection of what experience long before his time had proved, muſt have ſatisfied him, that *all might be in the wrong*, egregiouſly, violently, equally ſo; but in ſuch caſe the lover of truth and juſtice, though neither ſelfiſh nor timid, cannot enroll himſelf with any claſs; he will diſſent from every one of them, and the law muſt operate as a ſpecies of perſecution for conſcience ſake, and ſtimulate to diſſimulation and duplicity of conduct.

The impartial citizen muſt, in ſuch a caſe, feel

feel very diſagreeable; ſomewhat like a man who ſhuts his ears when looking at a dance, and very like a man perfectly ſober in a large company perfectly drunk. According to Solon's law, Cato ought to have been puniſhed, for he ſided neither with Cæſar nor Pompey; *cum alii ad Cæſarem inclinarent alii ad Pompeiun ſolus Cato fecit aliquas et reipublicæ partes.* Senec. Ep. 104.

A juſtly-celebrated writer *, whoſe ideas, in general, coincide with mine more than thoſe of any of the many authors I have read, has applauded this law in one of his Treatiſes; but he had not at that time ſufficiently weighed its conſequences. Accordingly he, in effect, contradicts himſelf in another work; there, indulging his own generous ſentiments, not criticiſing another's, he does ample juſtice to the man "who feels "himſelf ſtrong enough to walk alone in the "free career of his own thoughts," and concludes, "he who wiſhes to be equitable to "the whole world, he who wiſhes not to

* Mercier Eſſay ſur l'art dramatique, cap. 20.

" fall into groſs errors, muſt not adopt any " party." His words are:---" Si l'on veut " etre équitable envers tout le monde, ſi l'on " ne veut pas commettre de groſſieres er- " reurs, il ne faut point adopter de parti." Mon. Bonnet de nuit. S. ii.---p. 32.

Of the Ancient Democracies.

ACCORDING to Rouſſeau, in his famous Treatiſe on the Social Contract, there can be no free government but a pure democracy, that is, as the Greek word imports, a *People Government;* the citizens aſſembling *in perſon*, to legiſlate, deliberate, and determine on all public matters: from the inſtant they chuſe repreſentatives, they part (he affirms) with their liberty, and are annihilated.

If ſo, it is phyſically impoſſible, that a State can poſſeſs a free government, unleſs its territory be narrow, its population very limited, and its climate excellent; for great numbers muſt be excluded from the national aſſembly, if their homes be at a conſiderable diſtance from the place where it meets. No building can contain, and no voice can reach a very great multitude; and deliberations under inclement ſkies muſt be frequently

quently prevented, or interrupted, by the weather.

Suppoſing, however, the State fitted in all theſe reſpects for a pure democracy, another obſtacle preſents itſelf. If the citizens muſt aſſemble in perſon to do the public buſineſs, how is the work neceſſary for the maintenance of the ſociety to be performed? In the ancient democracies, it was by ſlaves, who far outnumbered the free men. The ſlavery then of the *many*, is neceſſary to procure the perfect liberty of *the few*. This, Rouſſeau does not diſpute: he ſays it may be ſo *(peut etre,)* and endeavours to account for it by the ſtate of ſociety being (as he maintains) contrary to nature. But is not the ſyſtem which reduces the multitude to extreme ſlavery, that the few may enjoy a perfect liberty, much inferior to that which confers liberty in a conſiderable, though not extreme degree, on all?

The truth is, theſe democracies have been moſt improperly held out by Rouſſeau, and many other writers, as objects of admiration to mankind. They were, in reality, deſpotic ariſto-

ariſtocracies, both deſtructive and diſgraceful to humanity, by reaſon of the ſlavery on which they were founded. The free men were the few in compariſon with the ſlaves; and theſe were kept in the moſt humiliating and diſtreſsful condition; conſidered not as perſons, but things, and expoſed to every ſpecies of cruelty and outrage. This obſervation applies to the American States during the war *.

As to the *love of their country*, of which ſo much has been ſaid, it is evident, that if that ſentiment be ſet in oppoſition to good will to mankind in general, it is an affectation only of diſintereſtedneſs, being, in reality, but an extenſion of ſelfiſhneſs. "Dulce "et decorum eſt pro patria mori." Undoubtedly, if the cauſe of your country, which calls for that exertion be juſt; but if it be the cauſe of plunder or murder, how can it be dulce or decorum? A man may owe

* See a Pamphlet printed in London 1795, entitled Rights and Remedies, p. 84, 85, in the notes.

owe duty to his country, however deteſtable its ſyſtem and conduct may be; but he ought not to love it, indeed he cannot: in the ſame way he owes duty to his father, though he be a robber or murderer; but he ought not to love him, indeed he cannot.

Of the Britiſh Conſtitution.

VINCERE SCIS HANNIBAL, VICTORIA UTI NESCIS. LIVY.

THERE is no proviſo in Magna Charta, the Bill of Rights, or any expreſs ſtatute, for ſecuring to the ſubject jury trial, or the liberty of the preſs.

We have no code, or inſtrument, aſcertaining the nature of our Government, and defining the functions and powers of its different component parts; we have only ſome declarations and uſage. It is the laſt which ſecures the liberty of the preſs and jury trial.

The late Lord Chatham, in one of his Speeches, finding it neceſſary to ſpecify what the Conſtitution is, ſays*, "We have Mag-

* See his Life in the 4to edition.

" na Charta, the Bill of Rights, the *Statute* " Book, and, above all, we have *common* " ſenſe and reaſon." In other, and perhaps as proper words, he might have ſaid, *There* is a common law of the Conſtitution, as well as of the land. Both determine new caſes by inference from acknowledged *principles* of right and expediency. In every country, a vaſt number of judicial caſes muſt occur, for the determination of which, *neither* ſtatute nor uſage ſuffice; they muſt be determined by the common law, which is the reſult of juſtice and utility combined.--- In the ſame way, in all countries, even in thoſe which have written conſtitutions, many political queſtions muſt ariſe, for the *determination* of which the written conſtitution is inadequate. Such muſt be determined by the common law of the Conſtitution. *e. g.* By the American Conſtitution, the Preſident, with the approbation of the Senate, has the power of appointing a ſecretary: *in* 1789*, a queſtion aroſe, and was keenly debated

* See the Congreſſional Regiſter for 1789.

bated in Congreſs, Whether, after ſuch ſecretary was appointed, he was removeable by the Preſident?

I find that an idea, ſomewhat ſimilar, had occurred to a writer of the other hemiſphere; but he has not followed it far enough, ſo as to bring it to a point, or draw any preciſe conſequence from it. In the poſtſcript to the Royal Gazette of Jamaica, from July 1730 to 6th Auguſt 1791, vol. xiii. number 32, it is ſtated, that a correſpondent obſerves, "It has been ſaid that the people of Eng-"land have no Conſtitution. But what, "according to ſome ſyſtems of politics are "conſtitutions? Bits of parchment, which "the people may, at one period, conſider as "the palladium of their rights, and at an-"other period annihilate as uſeleſs, and "worſe than uſeleſs repoſitories of abſurdi-"ties. The people of England have, how-"ever, high ideas of perſonal, ſocial, and "political freedom; and their ideas are in-"ſeparably connected with certain princi-"ples, which they wiſely ſuppoſed form the "great outlines of a conſtitution. This con-"ſtitution is written on their hearts. It

" there has an exiſtence, an influence, an " operation, which are ſuperior to effects " produced by periſhable manuſcripts, or " Parliament declarations. The Conſtitu- " tion, like the immutable principles of *com-* " *mon law*, approves itſelf to the reaſon and " conſcience of every free-born Engliſh- " man; and hence we find the natives of " that country, like the free citizens of the " United States, have a high ſenſe of the " ſuperior rank they hold in the commu- " nity of mankind. If the Engliſh nation " has no Conſtitution, what volumes have " been written by ſome very wiſe men on " a nonentity!"

In the debate in the Houſe of Commons on the legality of raiſing troops by benevolence, the Attorney-General having argued that there was nothing in the Bill of Rights againſt it *, Mr Fox anſwered, " From " the manner in which that bill had been " lately uſed, he foreſaw infinite miſchief; " for he ſhould ſoon expect to hear that all the

* Star, 29th March 1794.

" the rights of Engliſhmen were contained
" within that bill alone. This was a miſ-
" chief he ſeriouſly dreaded from the late
" uſe made of that bill, but he ſaid it only
" remedied the ſpecific grievances which
" called for immediate regulation; thus it
" provided the right to petition the Crown,
" becauſe perſons had been oppoſed in uſing
" that right. It ſaid nothing of the right
" to petition Parliament; for this reaſon, be-
" cauſe the ſubject had not been interrupt-
" ed in the exerciſe of that right."

This ſeems to be a juſt and valuable obſervation, and might have been further illuſtrated by what has been ſtated above, that the Bill of Rights does not provide for the liberty of the Preſs or Jury trial, and that there is and muſt be a common law of the conſtitution. Had we no conſtitution but what is written we ſhould have very little liberty. The Attorney-General's argument, however, ſhews the propriety of a full written conſtitution. At the ſame time, as our King and his Miniſters have all along admitted that this is a free country, it follows from that ſingle poſition, that we are entitled to all

all the rights which men muſt poſſeſs in order to be free; but then what the extent of theſe is which conſtitutes freedom, may be contraverted; and therefore, it had been better to have fixed them at once as far as human foreſight could go. The French political writers conſidered the Engliſh Government as a republic*; Democracy is, but Republicaniſm is not, by any means, incompatible with Royalty.

Of

* Mercier, in his Hiſt.' de l'an.' 2440. v. 3, ſays, "Les "hommes ſeroient viſiblement diſgraciés, s' il n'y avoit pas "un combat interieur, et toujours ſubſiſtant, entre la Liberté "& l'autorité; & voila ce qui a maintenu l'admirable Con"ſtitution d'Angleterre, formée Republicaine ſi heureuſement "combinée," et ibid. vol. II. he ſays, "On l'appelle Angle"terre une Republique Monarchique." Royale, he had better ſaid, For there is a great difference between a King and a Monarch. In Britain, the King has but a ſhare in the Government. Accordingly the ſame author, in his laſt work, *Notions claires*, vol. I. c. 3, corrects himſelf. "Il ne faut point "dire l'Angleterre eſt une Republique car elle ne reſſemble en "rien a la Republique Romaine, il faut dire c'eſt un beau "Gouvernement & *le moins imparfait des touts les Gouverne*"*ments modernes*." Theſe French authors, however, have, it is plain, attended more to the theory than the practice of our Conſtitution; now, that they have felt it, they would, perhaps, expreſs themſelves differently. One of them, indeed, many years ago (but he is very paradoxical) maintained, that the

Of Reformation.

SEVERAL writers have aſſerted, that there is no myſtery or difficulty in governing mankind.

This may be true, if, by governing, be meant the mere keeping together a number of men in ſociety. But if the object of government be, what it certainly ought to be, the greateſt poſſible happineſs of its ſubjects, the problem muſt be difficult every where.

The difficulty muſt be very much increaſed where there is a great expanſe of territory, that

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the praiſe beſtowed by Monteſquieu on the Britiſh Conſtitution was abſurd, and that the King of Britain may make himſelf abſolute when he pleaſes, without even changing exterior forms and appearances. See Linget Annales Politiques, vol. I. p. 296. Theſe Annals were publiſhed in London, whither the author had retired from perſecution.

that territory very populous, and the nation not merely agricultural, but manufacturing and commercial too; for, in every ſuch country, there muſt be a multitude of complicated and jarring intereſts to guide and controul. For the ſame reaſon, the law of every ſuch country muſt be voluminous and intricate*. Beccaria exclaims, "Happy the country in which law is not a ſcience!" but the idea would have been expreſſed more clearly and fairly, had he exclaimed, "Happy the country which is poor, or agricultural only!" How intricate and abſtruſe muſt the ſyſtem of bankrupt-law be wherever it is requiſite!

In every ſuch country, time alone muſt introduce abuſes, in the various ſyſtems of Government, Law, Education, and many others of importance, even ſuppoſing them to

* I have ſince found this idea very well explained in "Ami des Hommes," firſt publiſhed in 1758, and from which many authors have borrowed a great deal; "un "ſouverain, qui voudroit d'un part abreger le code de ſes "ſujéts, et de l'autre etendre leur induſtrie, chercheroit la "pierre philoſophale." Vol. II. p. 58.

to have been originally compoſed on what then appeared to be the beſt plans, (a caſe that has but rarely happened,) indeed it is only at the ſettlement of a new colony that the legiſlator has full ſcope for aiming at perfection.

But the generality of theſe ſyſtems, having either been thrown together by fortuitous circumſtances, or formed before experience had aſcertained their true principles, they do, and muſt abound with defects and abuſes, which occaſion to their ſubjects much inconvenience and diſtreſs that might have been avoided, and withhold from them much comfort and happineſs that might have been procured.

As ſuch defects and abuſes are unavoidable, the people ought to be patient of all that are not exceſſive, and their rulers diſpoſed to liſten to all propoſals of amendment; liſten, for to adopt is a very different thing.

The promoters of Reformation ought ſeriouſly to conſider what is laid down on that

ſubject, by the profound Italian politician *: "He who examines (he ſays) will find, that "in all human affairs, it is impoſſible to put "an end to one inconvenience, *without* "giving riſe to another." This, however, ought not to extinguiſh, but only moderate the ardour for reformation: accordingly *he* adds, that we ought to aim at finding out, and when found out, embrace the arrangement that is ſubject to the leſſer inconvenience.

It always was, and eſpecially now a-*days*, *it is*, the duty and intereſt of a ſtateſman, without the ſpur of popular remonſtrance or requeſt, to ſurvey all around him *with* the eye of reviſion; to be docile, not ſtubborn; alert, not lazy; inquiſitive after the complaints of thoſe under his care, anxious and active to relieve them.

He will, in all probability, commit a very dangerous error, if he refuſe to do what is juſt and reaſonable, on the ſuppoſition *that* he

* Machiavel, Diſc. on Livy, i. 6.

he will be able much longer to govern the bulk of mankind by force or deception of any kind: for knowledge is communicated and diffuſed, now a-days, with a rapidity and effect unknown to ancient times; and has produced a great variation in the ideas of men of all deſcriptions, in every country which it has pervaded.

Of Revolution.

WRITTEN IN 1794.

ET TE TUA FATA DOCEBO. VIRG.

THERE is one evident criterion as to the alteration of governments. Every government that does not ſecure its ſubjects in life, liberty, and property, and in a comfortable ſubſiſtence, if they be willing to work for it, ought to be regenerated, for the people are not the better of it: they could not be worſe, though there were no government at all. But every government that does give ſuch ſecurity, ought to be cheriſhed by its ſubjects, and either never retouched at all, or if it ever be, with the utmoſt delicacy. Even though it ſhould not give an abſolute ſecurity in theſe reſpects, but only a conſiderable degree of it, ſtill it is not the object of revolution, but amendment: for the former is a remedy ſo dangerous and deſperate, that it ought never to be applied but in a diſeaſe that is equally ſo. This plain propoſition marks the

the diſtinction between the Continent and this Iſland.

No good has been done by the authors in this country who have endeavoured to diminiſh or diſguiſe the ſufferings of the French before the revolution; as the miſrepreſentation has a tendency to lead the people of this country to conſider the proceedings of the French as a precedent for them. One of theſe authors admits ſome abuſes in their finance; but the deſcription he gives of their royalty, nobility, and clergy, is flattering and fallacious. The numerous and inſufferable oppreſſions and inſults to which that people and their moſt precious rights were expoſed before the revolution, are fully detailed by Mr Young, in his Tour through France, in 1788-9; and ſeveral of them, though confeſſedly not all of them, by a moderate and very ſenſible ariſtocratical writer, Mounier, in his "Re-" cherches ſur les cauſes qui ont empechés " la France d'etre libre."

Such being their ſituation, the author of the Mercure, in 1790, though he was not violent,

violent, but moderate, and foreſaw the calamities that would enſue, yet he exhorts his countrymen to perſiſt, though they ſhould ſuffer a hundred, nay a thouſand times more than they had done; becauſe nothing could be ſo horrible as what had been.

But the higher orders in this country have no reſemblance to thoſe that exiſted in France. No man, in this country, is inſulted by king, noble, or prieſt; therefore, though the French were not deterred, and perhaps ought not to have been deterred, from a revolution by the probability of future diſaſters, yet we moſt certainly ought to be ſo.

That the people, in moſt of the other countries on the continent, are in as bad, indeed in a worſe, condition than the French were, is generally agreed, and is aſſerted by the author referred to above. If ſo, ſimilar convulſions are to be expected in all of them, and at no great diſtance of time. It was ſtated in a newſpaper, about two years ago (October 1792) that it was reported there was to be a congreſs of Kings, or the Mini-

Miniſters of Kings, ſomewhere in Flanders, for the purpoſe of fixing upon ſome principles and alterations of government agreeable to the people. The report has proved to be falſe, but the meaſure had been wiſe.

If a total overthrow of the ancient ſyſtems, in moſt countries on the Continent, is at all to be prevented, it can only be by its princes and prieſts moderating their deſires, and the exerciſe of what they call their rights, and allowing to the bulk of mankind a degree of comfort and conſideration which they have not hitherto there enjoyed; an obſtinate and total oppoſition to reformation muſt prove fruitleſs and fatal. It may be ſtruggled againſt for a while, and the conteſt may coſt many lives and many tears; but the continental powers will find, and probably at no great diſtance of time, that Reformation is the only method to prevent, or long retard, Revolution.

They will keep up a great armed force: ſuppoſing them to be able to do ſo, which the immenſe debt they muſt have contracted by their wars renders very problematical;

cal*; yet that very force will ſoon, inſtead of ſerving, counteract the purpoſe of its inſtitution; it will turn againſt thoſe who raiſed it, becauſe it muſt (on the Continent) conſiſt almoſt entirely of the very men whoſe intereſt it is to reduce the new theory into practice, and whom their communication with the French (of late friendly and hoſtile) muſt have greatly enlightened: for, in the countries under conſideration, men may be ſaid to be divided into two claſſes, one that has a vaſt deal, and another that has nothing, or next to nothing. There exiſts not there that gradation which is to be found elſewhere. There is not a multitude of men of conſiderable property, a multitude of men of ſmall property, a multitude of tenants, of rich merchants, of ſubſtantial tradeſmen, which compoſe an ariſtocracy ſo numerous, as muſt be, if united, an overmatch for thoſe whoſe all is—ability to work.

The

* Mirabeau, in one of his Lettres to Manvillon, p. 86, ſays, "Je vous ai entendu dire une fois (el vous n'oublierez "pas cette idée dans votre ouvrage) qu'il ſe prepare une "grande et deſaſtreuſe revolution et celle ou les rois obli- "gés d'augmenter la ſolde de leur troupes qui autrement "mouroient de faim ne pourrent plus les payer."

The late King of Pruſſia, the late Emperor Joſeph, and the late Empreſs of Ruſſia, have each reformed the law of their reſpective countries by a new code of great merit. This was wiſe. I have not ſeen either that of the Emperor or Empreſs, but both are frequently referred to by Paſtoret in his Treatiſe on Penal Laws.

Of the chief Promoters of Revolutions.

DEXTRA TENET CALAMUM STRICTUM TENET ALTERA FERRUM. OVID.

A CELEBRATED writer againſt the French Conſtitution aſcribes the multitude of faults which he pretends to find in it, to a number of lawyers having been elected members of the Aſſembly which compoſed it; his opinion forſooth being, that lawyers everywhere, and eſpecially in France, are incapable of any great exertion beyond the line of their profeſſion, and particularly diſqualified from arranging the conſtitution of a ſtate.

A raſh, groundleſs, and injurious propoſition, repugnant both to reaſon and experience. It is obvious, that the profeſſion of the Law requires a more than ordinary education, and no ſmall ſhare of acuteneſs, judgment, and penetration; qualities highly proper for political reſearches; and that the practice of it muſt, frequently, lead thoſe who follow it to meditate on the government of their country, to perceive its defects, and

and to inveſtigate the remedies. This muſt have been peculiarly the caſe in France, from the nature of ſome of the courts there, which had long been in the practice of oppoſing, and, in ſome degree, controlling the arbitrary mandates of regal power. Many years ago, frequent and vigorous were the ſtruggles of the French Parliaments againſt oppreſſive edicts of the king; and ſpirited and eloquent were the remonſtrances which they ſpoke and publiſhed againſt them. It was ſome of them that made Lord Cheſterfield perceive the approach of the Revolution near forty years before it arrived. What was Monteſquieu?---A man of the law.

This writer talks with much contempt of the provincial Lawyers in that country. Did he conſider what a province in France is? Petion was an advocate of Rennes.

But who were the chief promoters of the American Revolution, to which this author has found no fault?---the Lawyers; a fact of which he could not be ignorant, from his having been long Agent for the Colony of

New York, and during the period of his ſeemingly-patriotic oppoſition to the American War.

But there was another claſs of men that contributed fully as much to the Revolution,—men of no profeſſion, no fortune, but of firſt-rate talents, and ſuperior ſoaring genius. France, for half a century paſt, has poſſeſſed more men of that deſcription than all the reſt of Europe; owing, perhaps, to all ranks in the army and navy being appropriated to nobility, and to the offices in the law being venal. Thus excluded, they naturally became authors, both for ſubſiſtence and honour, and on political ſubjects, theſe being the moſt intereſting, both to themſelves and to the public. They conſidered themſelves, and they in reality did form, a ſort of body, *le parti qui enſeigne*, the teaching or inſtructing party, as they expreſſed it. They devoted themſelves entirely to the compoſition of books, calculated to rouſe their countrymen to liberty; and encouraged, by the moſt pathetic exhortations, not only one another, but ſuch men every where, to ſimilar labours.

" O men

" O men of genius! (exclaims one of them,)
" of whatever country you may be, behold
" your lot,---misfortune, perſecution, injuſ-
" tice, the contempt of the court, the in-
" difference of the people, the calumny of
" thoſe who are or think themſelves your
" rivals, indigence, exile, and perhaps even
" an obſcure death at the diſtance of five
" hundred leagues from your country!
" Behold what I announce to you; but
" on that account muſt you renounce the
" inſtruction of men? undoubtedly not:
" and were you deſirous of doing ſo, is it
" in your power to ſubdue your genius,
" and reſiſt its rapid and terrible impulſe?
" Are you not formed to think, as the ſun
" is to ſhine? Have you not, like him, your
" energy? Obey then the law which guides
" you, and beware of deeming yourſelves
" unfortunate."

The argument, however, does not ſeem to conclude that a man of genius ſhould expoſe himſelf to all thoſe evils in his lifetime; rather that he ſhould commit them to writing, in order to be publiſhed after his death. Helvetius's book on Education was intentionally

tionally poſthumous, he having been cruelly and unjuſtly perſecuted during his life, for his Treatiſe de l'Eſprit. In truth, he who follows the laſt method has moſt merit; for he can have no other motive than good will towards mankind, the other may an inferior.

Duclas, in his Secret Memoirs of Louis XIV. ſays, "No perſecution, much indif-"ference and neglect, is the death of all "ſects. Truth itſelf, conſtantly deſpiſed "but not perſecuted, will have but few "partiſans."

The laſt propoſition, I apprehend, is erroneous. Truth may be long deſpiſed and may long have but few ſupporters; but in time it will prevail. I have ſeen ſeveral inſtances of this in my own time, and hiſtory affords a multitude.

De la Harpe (iv. 8.) has, in my judgment, with much more reaſon maintained as to Truth, that "ſhe meditates in ſecret the hap-"pineſs of mankind; ſhe throws continual-"ly into the earth uſeful ſeeds, which, tho' "often trodden under foot by the preſent "generation,

" generation, are, nevertheleſs, not choaked,
" but ripen obſcurely for futurity. The ſouls
" of men, rouſed and agitated by her, have
" tried all their force, and ſtretched all their
" ſprings. The common object of all is the
" human race. Let us be bold enough to
" believe, that their efforts ſhall not be ab-
" ſolutely barren, and let us not deſpair of
" mankind."

Of Parliamentary and Borough Reform.

MANY wiſe and ſalutary improvements on law, education, and ſeveral other articles of great moment, have been propoſed long ago by ſome firſt-rate writers. Theſe plans, however, have attracted the notice of but few in this country, though they would tend more to promote general good and domeſtic happineſs, than any other reformation whatever.

It is the defect, or abuſe, in the Parliamentary repreſentation, which has, for many years, almoſt engroſſed the attention of all ranks. It ſeems to lie in the command, which a few have obtained of the election of a very great number of the Members of the Houſe of Commons, as ſtated in the Petition preſented to that Body, 6 May 1793, by Mr Grey.

That

That command puts it in the power of a few to thwart the meaſures of Government, which muſt either yield to, or gain a majority of them, it cannot but chuſe the latter alternative; and the conſequence is, to beſtow on the few an influence which converts them into a ſort of Oligarchy. This is productive of many evils, particularly of an oppoſition, not from conviction (which muſt be always highly uſeful,) but of one from ambition or intereſt, which has been frequently hurtful; and of a diſtribution of offices, places, and penſions, different from what would be made but for that influence, and probably not ſo juſt to individuals or advantageous to the public.

Beſides, the Conſtitution is not in *fact* what it pretends to be in *theory*. Now deception, when perceived, muſt excite general indignation; unleſs itſelf, or ſomething as bad, has introduced a general apathy or ſelfiſhneſs.

A late very judicious French ariſtocratical author (Mounier) gives his opinion upon this ſubject as follows: "Thoſe who have

" attentively conſidered the different ſprings " of the Engliſh Government, know that, " notwithſtanding all the prerogatives of the " Crown, the King could not maintain or- " der and preſerve his authority, if his " means of influence were in the leaſt di- " miniſhed, or the democratic power in the " leaſt ſtrengthened. It is well known, that " in Britain, the number of the repreſenta- " tives of the people is very unequally " diſtributed; that inſignificant boroughs, " which contain but a few inhabitants, have, " by uſage, the right of deputing, while " very populous diſtricts do not participate " of that right. That irregularity appears " to be contrary to ſeveral inconteſtible " principles: but it could not be rectified " without augmenting the force of the de- " mocratic part of the Government, with- " out endangering that equipoiſe which has " been ſo well preſerved for near a century; " and if ever it ſhall be agreed to render " the repreſentation more equal, it will be " indiſpenſibly neceſſary to ſtrengthen the " other two branches."

This, perhaps, is all very ſolid; but it has no

no tendency to ſupport the preſent abuſes. Let the crown, let the nobility have great influence; but let it be fair and open; not circuitous, corruptive, and flatly repugnant to the expreſs dictates of the Conſtitution.

It appears to me, that it is the true intereſt of the King and his Miniſters to ſhake off the Oligarchy, which, by perverting the Conſtitution, has poſſeſſed itſelf of ſo much influence in the elections; and that, it ſhould ſeem, might eaſily be done: but whether any further alteration ought to be made, and if it ought, to what extent, is a very delicate and difficult queſtion; ſo very much ſo, that it muſt require a very long and deliberate diſcuſſion, after which poſſibly it might appear that any further alteration is inexpedient or impracticable; a conſideration that, among others, makes me very much ſurpriſed that our miniſters ſhould have adopted the very ſtrong meaſure of refuſing to liſten to any propoſal whatever upon the ſubject.

As to the Borough Reform, it ought, in

order to give it real merit, to be carried much further than is propoſed; to an abolition of all corporations, for the reaſons aſſigned by Mr Smith in his Wealth of Nations, and many other authors, who, I believe, have convinced all mankind, except the members of theſe corporations, of the juſtice and expediency of the alteration.

In a late litigation before me, between the Maſter Taylors of Edinburgh and their Journeymen, the latter declared, that they could afford, and were ready to make all the different articles of men's apparel, ſome a fourth, ſome a third, and ſome a *half* cheaper than the rate at which their maſters charged: and they produced a printed paper and table, from which it appeared, that they had made the ſame offer in a ſimilar law-ſuit before the Court of Seſſion twenty years ago. Thus the country is heavily taxed to maintain an ariſtocracy of taylors. The caſe is the ſame with the other corporations; but the Borough reformers have ſeveral times declared, and in ſome printed papers lately, that ſuch abolition was no part of their plan.

Of

Of French Principles.

WHAT we call French Principles, were, by no means, firſt broached by the political writers of that nation.

In a French book, Les Loiſirs de Chevalier D'Eon, I found a tranſlation of an Engliſh pamphlet by Marchamont Needham, firſt printed in 1656, and reprinted in 1764, which contains them all. According to the tranſlation (for I have not been able to procure a copy of the original) the title, which is long, imports "The excellence of a free ſtate, or the true conſtitution of a Republic," &c. The purpoſe of it is to prove, that a *repreſentative Democracy*, the members of which are freely and ſucceſſively choſen by the People, is the beſt Government.

The French Conſtitution is, by no means, compoſed (as appears from what has been ſtated above) according to Rouſſeau's ideas. The

The Mercure de France (3d July 1790) after relating that an artiſt of Paris had preſented to the National Aſſembly a buſt of Rouſſeau, with the Social Contract at his ſide, and giving a ſummary of the principles it contains, adds, and juſtly, " If there exiſts a book, diametrically contrary to the principles of the French Conſtitution, it is ſurely the Social Contract. Were Rouſſeau to return to this world, he would be confounded at the homage he receives."

But the French Conſtitution is framed, almoſt entirely, according to the ideas of the author of that pamphlet; in which are to be found all the bold and brilliant arguments of the late celebrated writers and ſpeakers in its favour*.

He

* Though all the principles and arguments of the French Philoſophers are in this work, yet Republicaniſm was not able to keep its ground after Cromwell's death; it probably will, now, in another country. The reaſon of the difference ſeems to be, that that the Republicans, in the laſt century, did not act upon theſe generous and noble principles, but upon thoſe of religious zeal and fanaticiſm, which being abſurd, were turned into ridicule, and diſpelled

He ſtates fairly and forcibly, all the objections to his ſyſtem, and anſwers them, particularly the common one, that ſuch Goverment cannot be eſtabliſhed without throwing

led by truth; but in theſe times that is not the principle. The French, however, by their exceſſes and outrages, have expoſed their principles to much cenſure. It is curious enough, that the declaration of the Rights of Man, and a National Convention, were introduced even into Ruſſia by the Empreſs Catharine before ſhe effected her revolution. The Scotch Encyclopædia Britannica, *voce* Ruſſia, ſays, "That in 1772, the people at large were in a ſtate of indifference, out of which they were roufed by the following means:—a little manuſcript was handed about, containing principles of legiſlation for Ruſſia, founded on *natural rights*, and on the claims of the different claſſes of people, which had been inſenſibly formed, and became ſo familiar as to appear natural. In that performance was propoſed *a convention of deputies from all the claſſes, and from every part of the empire*, to converſe, but without authority, on the ſubjects on which it treated, and to inform the ſenate of the reſult of their deliberations. *It paſſed for the work of her Majeſty, and was much admired.*" It is added, "That in 1777, (that is four years after the revolution) the convention of deputies at laſt aſſembled in the capital; the Empreſs's book of inſtructions came forth, and ſome very great things were expected. The moſt conſequential of the deputies were privately inſtructed to be very cautious, and informed, that carriages and guards were ready for Siberia.

"There

ing the ſtate into confuſion, and putting all the citizens on a level. He ſays, If the expreſſion, " putting on a level," be underſtood in the vulgar ſenſe, it conveys an odious idea; as it would introduce a communion of goods, ſtrip individuals of their property, and give all men a right to enjoy, without diſtinction, whatever they found would be convenient for them. " Such is " the ſcandalous object which our enemies " aſcribe to a government depending on the " people, although in reality no form of ad- " miniſtration is more directly againſt it; " but they think they cannot make it be ha- " ted too much. A Government, the whole " authority of which reſides in ſupreme aſ- " ſemblies, compoſed of perſons placed in it " by the free choice of the people, ſo far " from introducing a communion of goods, " hurtful to the generality, is the only one " that ſecures inconteſtibly to every indivi- dual,

" There was a grand proceſſion at their preſentation, each " had the honour of kiſſing her Majeſty's hand, and recei- " ving a gold medal. They met in form to recogniſe one " another, then parted, and have never met ſince."

" dual, the peaceable enjoyment of what be-
" longs to him."

What do you mean by the people? is a a very natural and proper queſtion, in every ſuch argument. This the author felt; but what he ſays upon it, is by no means ſatisfactory. He ſays, he has not in view, when he ſpeaks of the people, " a confuſed body, " compoſed of all the individuals of the na-" tion; nor thoſe whom the law has be-" reaved of their privileges, in puniſhment " of their crimes." This is ſo far right; but why does he ſtop ſhort at the negative? why does he not tell us poſitively what he underſtands by the people? That he has thought proper to avoid; and it is, no doubt, difficult, as is proved by the variation in the French conſtitutions on that point.

Mercier, in his book on Rouſſeau, is at great pains to inculcate a diſtinction between the *people* and the *populace*, and finds great fault with the ariſtocrats for always confounding them: by the firſt, he underſtands the enlightened part of the community; by the other, the unenlightend, of

which he talks with very great contempt. But what criterion can aſcertain who are enlightened, who not? nor can ſuch diſtinction long ſubſiſt, if his advice in another book be followed, which is, that all ſhould read; if they do, all muſt become enlightened, and the diſtinction vaniſh.

Rouſſeau, who, in his Social Contract, has ſaid ſo much on the *general will*, ought to have ſaid a great deal more; and have ſpecified who they are, whoſe accumulated will is to compoſe the general one.---Are women of the number? This he has not touched upon. Ariſtotle excludes women and males under age, as being *imperfect citizens*; but if imperfection is to exclude, it will go to all men of full age, who, from ignorance or ſtupidity, are incapable of forming an opinion as to men and manners. The French are endeavouring to obviate this difficulty by a national education, and a political catechiſm: this may do a great deal, but ſtill it ſeems impoſſible to prevent an ariſtocracy of *mind*, (which it is ſaid the people are very deſirous of doing) for all cannot have equal capacity and opportunity of reading and inſtruction,

ſtruction, ſo that ſuch an ariſtocracy muſt of neceſſity ariſe.

I have heard it ſaid, that the occupation of the common people does not leave them time for inſtructing themſelves by reading. But the new philoſophic ſyſtem propoſes greatly to diminiſh the number of working hours. The author of the Tour through the Theatre of the War in 1792-3, ſays, That a member of the National Convention told him, "I have made an exact calculation, "and I find, that, four hours of work in a "day, in our temperate climate, would ſuf- "fice for the ſubſiſtence of a man and his "family. Thoſe that remain would afford "him leiſure for inſtruction and reflection; "and it would then become impoſſible for "ſuch a man to be impoſed upon by the "cant of a few intereſted individuals, who "aſſure them, that the nation has reached "the higheſt pitch of proſperity; becauſe "they themſelves have obtained every gra- "tification of luxury that they can deſire; "but, to keep men ignorant, you muſt make "them work; and, to make them work, you "muſt keep them ignorant."

This diminution of labour does not ſeem neceſſary in countries where they have one day in ſeven to themſelves; that day, with an hour every evening, which they could eaſily ſpare, may ſuffice. The ignorance of the common people, hitherto, is not owing to want of time, but of taſte, and the means of acquiring uſeful knowledge. Their ſpare time is generally thrown away in diſſipation, or in reading that has no tendency to enable them to judge of the true intereſts of themſelves and their country. Every government ought to provide ſome public innocent amuſements for the people.

Mercier ſays, "The people always have "proved, and always muſt prove, an incon- "ſtant and inhuman ſovereign. We need "only open hiſtory to be convinced of this." The obſervation as to the paſt is moſt juſt; but there ſeems reaſon for thinking, that the inconſtancy and inhumanity alluded to, was owing to ignorance. Neither Athenians nor Romans could be ſufficiently enlightened from the want of the art of printing. That invention renders it very eaſy, now a-days, to inſtruct all the people to a certain degree;

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to ſuch a degree as to enable them to form a juſt judgment as to men and meaſures; and great pains ought to be beſtowed to inſtruct them. It may be ſaid, It is not for their intereſt to do ſo. This is a delicate queſtion, which it is unneceſſary to diſcuſs; for, now a-days, it is impoſſible to prevent them from reading; and it is much better to place objects before them in a fair and full light, than in a falſe or improper one.

The tranſlator of one of Briſſot's pamphlets, aſſerts, in his preface, that ſuch are the French principles, and ſuch human nature, that every country muſt either adopt them with ardour and enthuſiaſm, or reject them with horror and indignation.

What their reception ought to be, to me ſeems to depend upon circumſtances. If they be propoſed in a country where there is an eſtabliſhed government, under which the people feel themſelves well, or tolerably well, they ought to be rejected; becauſe, in ſuch a country, they cannot be carried into execution without occaſioning infinite confuſion

ſion and calamity; but if they be propoſed at the eſtabliſhment of a new colony; or in a country, where, by ſome means or other, the former conſtitution has been totally diſſolved, they ought to be received, not with ardour or enthuſiaſm, but with a candid heſitation; becauſe they are apparently, tho' poſſibly, and, indeed probably, not in reality, much more for the honour and intereſt of mankind in general, than any ſyſtem whatever that has been yet invented. For this reaſon, though I am as averſe to their introduction into this iſland as any of its inhabitants, yet I confeſs I ſhould have been ſorry to have ſeen them expelled by force from France. Let them have fair play; let us ſee whether they will bear a calm as well as they have a ſtorm. This, indeed, in the long-run, muſt be the intereſt of the eſtabliſhed ſyſtems themſelves; for, if theſe principles had been ſmothered in France by force, the bulk of mankind, to whom they are ſo faſcinating, would have believed that they had not got a fair trial; and, of conſequence, they muſt have, ſooner or later, been rekindled over Europe, perhaps the globe. Whereas, if the French Republic fall

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to pieces of itſelf, which it muſt infallibly do, if its principles be (as is alledged) chimerical and extravagant; the minds of men will be quieted; their impracticableneſs having been aſcertained by experience.

TURGOT.

Of the Trial of Louis *XVI.*

I HAVE read the impartial Hiſtory of Louis the Sixteenth, by a Frenchman, of the law profeſſion, called Jauffret, in eight volumes, printed at Paris in 1793. It ſeems very well to deſerve the epithet it has aſſumed, as it contains all the ſpeeches, and opinions, and a number of very well written pieces on both ſides of that important caſe. All the members of the Convention agreed that he had betrayed the conſtitution, as they expreſſed it, encouraged the invaſion of the Pruſſians, palſied the national force, &c. It however appeared to me, that, ſuppoſing all this to be true, he was excuſable for the reaſons aſſigned, by a member, whoſe piece is inſerted in vol. V. chap. 86. His chief topics are, That the King was provoked, deceived, and made to believe that the Conſtitution was not, in reality, agreeable to the nation.

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The ſlaughter of the people on the tenth of Auguſt preceding ſeems to be what had the greateſt influence againſt him. It was not, however, proved, that he had any acceſſion to it; but the ſpeakers, I find, take it for granted, and, on that account, conſider his trial, not as a legal proceſs, but a proceeding by way of attainder.

Various other facts are founded on by different ſpeakers, of which there is no evidence produced, *e. g.* That he always kept in his pocket a copy of a diſpenſation from the Pope, abſolving him from the oath he had taken to obſerve the Conſtitution. It was denied by the King, in his defence, that he had any acceſſion to the ſlaughter in October; and he was ſo ſenſible himſelf of the weight of this accuſation, that, after his counſel had finiſhed, he roſe, and made a ſolemn declaration that this charge was groundleſs.

Many of the ſpeeches, and particularly thoſe of Lalle and Briſſot, who were for remitting his caſe to the Primary Aſſemblies, maintain, at great length, that all the foreign

powers did, in reality, whatever they might pretend, desire his death; as they expected it would divide France, by raising up an anti-republican party, and lay a foundation for further massacres; which would render France horrible to all nations, and produce an universal coalition, either to exterminate its inhabitants, or bring them again under the yoke of despotism. "The fine protesta-" tions (said Brissot) of the English *ministry*, " have remained in their port-folios, and not " yet crossed the Channel. They feel the " necessity of ruining the Constitution of " the French, or the nation. In the opinion " of the English, they feel they want us too " attrocious, or at least a judgment that may " seem so."

No person can easily believe that such was the conduct of our Ministry, whatever suspicions may be entertained as to other powers, who seem certainly to have very early formed a plan of conquering France, and dividing it among them. A very intelligent French Emigrant told me in Autumn 1793, that the death of the King had been purchased by a continental power. It is, however, hardly

hardly credible that any monarch would purchaſe the execution of a brother king, even though the acquiſition of territory had been the certain conſequence, for it certainly was a terrible precedent. As to the want of force and anxiety in the ſtyle uſed in the repreſentations of ſome ſovereigns, of which Briſſot takes notice, it is to be preſumed they uſed a feeble, only for fear of irritating by a forcible, expreſſion.

There is, however, one circumſtance, which, if true, entirely weakens this favourable ſuggeſtion. The author of the Letters from France, printed in London in 1793, pointedly aſſerts, vol. IV. Letter 4. p. 144, *That the French offered to exchange the Queen of France for their Miniſter and the four deputies betrayed by Dumourier to the Auſtrians, and the propoſal was rejected.*

I have, likewiſe, read a book entituled, Le Pour et le Contre: it is a complete collection of all the opinions delivered on this important trial; and of all the papers produced. The ſpeeches are all very good, and ſome of them very eloquent. Petion, who

was againſt the King, laid great ſtreſs, as well as others, on the great expediency of putting him to death. The ſpeech of Fauchet, who was for him, is extremely eloquent; he was not only a deputy, but a biſhop. Several take notice of what ought to be the fate of the Dauphin; and give it as their opinion, that he ſhould be educated as well as the young Egalité (the Duke of Orleans' ſon) at the national expence. Maivuel, in ſpeaking on this ſubject, ſays, (vol. I. p. 353,) "Quel que ſoit ſon ſupplice, *(alluding to the King)* il n'y aſſiſtera pas; cet enfant encore "n'a que ſa naiſſance a expier; et je demande qu'a l'inſtant meme, la Republique ſe chargeant de ſon education, lui faſſe oublier les vices et les malheurs de ſa naiſſance."

I think it is clearly eſtabliſhed, from this report of the trial, that the King was guilty of the crime charged; that is, that he betrayed the Conſtitution, though he pretended to accept of it; encouraged the attack of the Pruſſians; prevented the national force from being exerted, &c. But ſtill, certainly, in ſuch a caſe, the opinions for the mildeſt puniſhment

niſhment were the moſt juſt, not to ſay moſt prudent and political.

It may, with apparent plauſibility, be ſaid, that the regicide, and conſequent maſſacres of the French, afford a ſtrong argument againſt their principles. No doubt, if ſuch events had taken place in France when left to itſelf, the argument would have been ſtrong; but if (as there is reaſon to think) theſe calamities were occaſioned by the interpoſition of foreign powers, or by their fraud or influence, the argument is very much weakened. Indeed ſuch reaſoning tends to prove the contrary; for, it certainly ſhews, that thoſe powers who were fooliſh enough to interpoſe, muſt have been afraid, that the French, if left to themſelves, would ſucceed in eſtabliſhing their ſyſtem. Beſides, the bold, but impotent attempt of the coaleſced powers, was moſt dangerous to royalty every where; as it tended to degrade and debaſe it in the eyes of mankind; and it muſt be noticed, that this was one of the chief political reaſons urged by all thoſe who voted for bringing Louis the Sixteenth to the ſcaffold; as is plainly ſpoken out by the famous

mous Robeſpierre, Sergent, and others, in giving their opinions on that momentous queſtion.

Dr Moore, in his Letters from France, mentions, that judgment went againſt the King, in conſequence of an artful ſtate of the vote, which was as follows :—

" I. Is Louis Capet, late King of France, " guilty of a conſpiracy againſt liberty, and " of attempts againſt the general ſafety of " the ſtate ?—Yes, or No ?"

" II. Shall the judgment, to be pronoun- " ced on Louis, be ſubmitted to the ratifi- " cation of the people in the primary aſ- " ſemblies ?—Yes, or No ?"

" III. What puniſhment has he incur- " red ?"

Several deputies, he ſays, voted againſt the appeal to the aſſemblies; believing the King would not be condemned to death; but had the queſtion, as to the puniſhment, been brought on in the ſecond place, they would have found that the appeal was the only me-

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thod of ſaving his life, and conſequently would neceſſarily have voted for that meaſure.

Dr Moore mentions, that there was a great debate about the arrangement of the vote. They, no doubt, foreſeeing the importance of having a proper ſtate of it, would have a queſtion, *Firſt or ſecond ſtate of the vote?* which I have often ſeen put in the General Aſſembly of the Church of Scotland. For the manner of putting the queſtion in a numerous Court muſt often be deciſive of the cauſe, as I truſt I have ſhewn ſufficiently in the paper on that ſubject*.

There is a very juſt obſervation in the beginning of the ſpeech of Meriſon, which, I hope, will be attended to by thoſe who may think that there are any miſtakes in the few reflections I have ventured to make on this truly important trial; his words are: "L'erreur eſt ſouvent utile pour mieux ſentir la verité, c'eſt une ombre au tableau, il en faut pour en preciſer les traits."

* See p. 6 of this Volume.

Mon-

Monſieur DE LA FAYETTE.

IN the third part of a book, entituled, "The Hiſtory of the Jockey Club," publiſhed at London in 1792, which gives a ſketch of the characters of both the Queen of France and Monſieur de la Fayette, it is ſaid, that letters were found in her cabinet, which prove Fayette's treachery, and that his feeble virtue was overcome by the Queen.

The French ought to publiſh the proofs on which they found his guilt; for a ſuſpicion (which many entertain) that he has been accuſed from ignorance or injuſtice, muſt damp the ſpirit and ardour for Reformation every where, on account of the character and conduct of the man at a former period. Indeed, even his guilt, if proved, muſt have no ſmall tendency to do ſo; for what man can convince the world that he will not be ſeduced by ſome temptation or other, if the illuſtrious Fayette has betrayed himſelf to a woman!

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It would ſeem, however, that the true cauſe of his defection was, his diſguſt at the ſhocking cruelties committed by the people. In a book, publiſhed in 1790, entituled, " L'Hiſtoire de la Revolution, 1789, par deux amis de la liberté," there is inſerted a confidential letter from d'Eſtaing to the Queen, in which he ſays, " Monſieur de la Fayette m'a juré " en route, et je le crois, que les atrocités " avoient fait de lui un royaliſt."

TURGOT.

He was a great Miniſter, and a real Philoſopher. He corrected a variety of abuſes; and pointed at correcting many more, while he was in power; but, on that account, he was not allowed to remain in office above twenty months. The nobility, clergy, and financiers, inſiſted on his diſmiſſion. Had he continued for any time, he would have done infinite ſervice to France, without overturning the government.

To me, it appears, that evil predominates in this world, and muſt continue to do ſo while it laſts; but Turgot, according to his biographer, Condorcet, "ſaw an evil phyſi-
"cal and moral; nothing but the neceſſary
"conſequence of the exiſtence of beings en-
"dowed with ſenſibility, capable of reaſon,
"and of a limited capacity. The *perfectibi-*
"*lity* with which ſeveral ſpecies, and, in par-
"ticu-

" ticular, the human are endowed, is a ſlow, " but infallible remedy to the evils." This is afterwards enlarged upon, and a hope and belief entertained, that mankind, in time, would become very much enlightened and progreſſive towards perfection.

I moſt heartily wiſh they may: but, to me, the paſſions ſeem invincible obſtacles. I agree, that an abſurd legiſlation, education, and religion, engender a number of paſſions that are not natural, and inflame thoſe which are; but the natural paſſions are of themſelves ſo ſtrong, that it ſeems to be impoſſible, by any ſyſtem, to ſubdue or reſtrain them, ſo as to prevent much miſchief from ariſing from them in a ſhort time. If it be, as has hitherto been ſuppoſed, one of the firſt maxims of legiſlation, *concubitu prohibere vago*, then the firſt thing to be done, in forming a political ſociety, is, to paſs a law, which is to be tranſgreſſed as ſoon as it is enacted, and to give riſe to a variety of evils.

He finds fault (at leaſt by implication) with crimes at common law; for he maintains, that the law ought to fix preciſely what conſtitutes

a crime; and what punishment ought to be inflicted, without leaving any thing to be determined by the Court, as to the qualification of actions, or the extent of punishment.

According to this doctrine, every perpetrator of a new crime must escape. *This is* not just or expedient. It may, however, be more expedient to submit to this evil, than to admit of crimes at common law; *as that*, of course, confers an arbitrary power on criminal courts, both as to relevancy and punishment.

He requires that the criminal tribunal be composed of men, intelligent, and exempted from popular prejudices; that its members be not perpetual, that is, I suppose, for *life*; that the proof, against the person accused be printed, at the public expence, a certain time before the judgment.

This last, in very important, difficult, or political cases, would be a proper regulation. Our present forms and practice in Scotland, which do not admit of an adjournment in a

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criminal trial, afford ſtrong reaſons for diſpenſing with taking down the evidence in writing by the clerk from the dictation of the Court, for the fatigue, from the length of the ſederunt, was often inſufferable; but I begin to think that we had better have an adjournment with a full and fair record of the evidence, and ample time to deliberate. It is too looſe, in matters of ſuch conſequence, to truſt to a ſhort-hand writer, or to the notes of the Judge. The public opinion, if that were the caſe, might, no doubt, have weight, and it ought; it is much better that the public opinion ſhould prevent a wrong judgment, than condemn it after it has been pronounced.

He is for allowing challenges without cauſe, *(non motivées)* and ſo muſt every man whoſe object in his regulations is to ſecure a fair trial.

Domeſtic virtues contribute moſt (he ſays) to the happineſs of ſociety. Theſe have never exiſted, he ſays, in any ſociety; becauſe no nation has had good laws. He then gives a deſcription of laws enacted hitherto. They have flattered, he aſſerts, the vices of humanity: been made

made according to the will of the ſtrongeſt; have ſanctioned the deſpotiſm of men over women, fathers over children, maſters over their ſervants, the rich over the poor, the great over the little; (" ou de la populace " ſur les citoyens") of the populace over the citizens.

He next ſuppoſes theſe laws abrogated, and their place ſupplied by thoſe of nature and reaſon: laws with regard to marriage more agreeable to nature; dividing the ſucceſſion equally among the children; granting liberty of commerce; aboliſhing privileges; impoſing but one tax, &c.

He aſſerts (and a very important propoſition it is) that bad laws are the ſource of bad manners; and (what is ſtill more ſo,) that laws, founded on the nature of man and ſociety, muſt be the ſame every where; and that political writers ought to employ their talents in ſimplifying and perfecting legiſlation; which, when accompliſhed, the people will be happy, whatever the form of government may be; that the ſubjects of a monarchy, if ſuch laws took place, would be much

much more happy than they are "under the moſt part of the conſtitutions which pretend to be republican." That, in countries, where no political liberty exiſts, moſt of the vexations ariſe from defects in legiſlation, not the privation of that liberty; that there is more reaſon to expect a good legiſlation under a monarchy, than under any other form; that he never knew a real republic; he held that form to be the beſt; that men would always grow better the more they were enlightened; that it was owing to their bad education, and oppreſſion, that theſe truths had not been ſooner diſcovered; and that the art of printing would perpetuate them, and be of infinite ſervice.

He thought that luxury ought to be attacked by wiſe laws, tending to diminiſh eſtates; and not by ſumptuary laws which are unjuſt, hurtful to induſtry, may be eaſily eluded; and, were they to be obſerved, would perpetuate wealth in families, and thus ſerve to maintain that inequality, the effects of which are more dangerous than luxury.

This,

This, however, would prove but a feeble attack upon luxury, which, according to his ſyſtem, muſt, nevertheleſs, come to a very great height, as he is for encouraging commerce and circulation to the utmoſt.

Of

Of the Firſt French Conſtitution.

EVEN the firſt French Conſtitution, as eſtabliſhed by the National Aſſembly, was beheld with no favourable eye by many in this country. Some, and theſe not the moſt unthinking, were apprehenſive, that the political intereſt of Britain would ſuffer by the event.

If nations were equally enlightened as to government, religion, trade, &c. their proſperity and power would be as their local advantages: but arbitrary ſway and prieſtcraft having poſſeſſed themſelves of ſome of the fineſt countries in the globe, ignorance and miſgovernment have deprived their inhabitants of the bleſſings intended them by nature; and enabled other nations, much leſs favoured by her, to make a figure beyond what they were entitled to from their comparative ſtrength and ſituation. This will be found to have been the caſe

with Great Britain, when compared with France; but the Revolution could not fail to awaken the latter to her true intereſts, and, by removing the oppreſſion of her government, enable her to avail herſelf of all her local advantages, which being far ſuperior to Britain's, the conſequence that was dreaded would be, to oblige this country to hold a lower place in the ſcale of nations, than that which it had occupied for ſo great a length of time*.

It is evident, however, that this muſt have been the caſe in France without a revolution, if the reformation had only taken place, which the King himſelf propoſed at the meeting of the Aſſembly of the Notables. Such variations in the fate of nations are inevitable in the natural courſe of things; and the country that ſuffers in conſequence

* The dividing France into a number of ſmall republics, would have been moſt for the political intereſt of Great Britain. It ſeems ro have been the plan ſuggeſted by Briſſot and others, called Girondiſts. It was alſo long before ſuggeſted by Helvetius. See his Poſthumous Treatiſe de L'Homme, ſect. 9. c. II. and IV.

ſequence of them, ought either to ſubmit to them with a good grace, or ſeek for new ſources of power and commerce, if theſe cannot be diſpenſed with.

The French Revolution too, naturally offended the national pride of many in this country. We had long boaſted of our liberty; long ſaid and ſung, "That none are ſo free as the Sons of the Waves:" and this the French have hitherto acknowledged: but when they came ſeriouſly to conſider what would form the beſt conſtitution, they pretended to point out many imperfections and faults in ours; and framed one which profeſſed to carry liberty much farther. Neither the critique, nor the contraſt, could be agreeable to us.

But what, probably, gave the greateſt offence was,—the abolition of all titles and rank.

The firſt revolution was accompliſhed without any bloodſhed or puniſhment. It was the attempt to overthrow it that occaſioned all the ſubſequent miſchief.

It appears, however, Mirabeau thought that it had come on too ſoon*, and before

* This was likewiſe the opinion of the very judicious author of the Mercure de France, 17th July 1790; his words are,—"Si les bons ecrits ont eté regardés dans touts les tems comme "des bienfaits publics, ils ſont encore plus precieux, lorſqu'ils "paroiſſent dans un moment, où leur utilité devient plus "prompte et plus immediate. Il importe a la Conſtitution "naiſſante, et nous oſons le dire, a la tranquillité publique, que "de pareilles ouvrages, repandus dans toutes les claſſes ſuſcep-"tibles d'inſtruction, élevent le peuple au niveau de la Conſti-"tution qu'on lui a donnée; car il faut en convenir, cette "Conſtitution, ouvrage en partie de l'opinion publique, ſe "trouve a quelques egards, ſuperieure aux lumieres actuelles "de la plupart des citoyens, et ſur tout aux habitudes du "grand nombre. C'eſt un embarras plus qu'un danger; mais "enfin ſi l'ancien Gouvernement a peri par le deſavantage "contraire, *et pour etre reſté trop en arriere de la nation*, il neſt "pas moins á craindre que la Conſtitution nouvelle, ne ſoit "genée quelque tems, dans ſa marche, par la difficulté d'ele-"ver ſur le champ, a ſon niveau, les idees d'une multitude "longs tems ignorante et avilie."

The cauſe which this author aſſigns for the downfall of the French monarchy, "pour etre reſté trop en arriere de la na-"tion," ought to be ſeriouſly conſidered by anti-reformers; as well as the following paſſage of another very ſenſible ariſtocratic author:—"Lorſqu'on veut empecher les horreurs d'une "Revolution il faut la vouloir et la faire ſoimeme. Elle doit "trop neceſſaire en France, pour n'etre pas inevitable. Com-"bien des Gouvernements en Europe y ſeront pris, pour n'y "avoir pas plus ſongés que le cabinet de Verſailles." Journal de Sabatier, No. 10. p. 104.

I was

fore the people were ripe for it. In one of his letters to Mauſillon, p. 471, he ſays, " Il eſt certain que la nation, n'eſt pas mu- " ré, l'exceſſive impéritie, l'epouvantable de- " ſordre du gouvernment ont mis *en ſerre* " *chaude* la revolution. Elle a devancé notre " aptitude et notre inſtruction." Condorcet, in his poſthumous works, ſays (p. 276) of France, " La mal adreſſe de ſon gouvern-e " ment a precipite cette Revolution *."

* According to Rouſſeau, in his famous Treatiſe on the Social Contract, " La ſouveraineté ne peut etre repreſentée " par la meme raiſon qu'elle ne peut etre alienée, elle conſiſte " eſſentiellement dans la volonte generale, & la volonté ne ſe " repreſent point, elle eſt la meme, ou elle eſt autre, il ny a " pas de milieu. Les deputés du peuple ne ſont dont que ſes " commiſſaires, ils ne peuvent rien conclurre definitivement.— " Toute loi que le peuple en *perſonne* n'a pas ratifié eſt nulle ; " ce n'eſt point une loi. Le peuple Anglois penſe etre libre " il ſe trompe fort, il ne l'eſt que durant l'election des mem- " bres du Parlement : Sitot qu'ils ſont elus, il eſt eſclave, il " n'eſt rien. Dans les courts moments de ſa liberté l'uſage " qu'il en fait merite bien qu'il la perde." Mercier, in his book on Rouſſeau, laments, that the latter did not live to ſee the Revolution. It is indeed to be regretted that he did not live juſt to ſee it and then die; for, if he had lived longer, he would probably have ſuffered, as he would have joined the party who wiſhed to divide France into ſmall republics.

Of the French Decree of the 15 *Dec.* 1793.

It was alledged by many members of the French Convention, and by many others, that this decree had been propoſed by men unfriendly to their new Conſtitution; and, therefore, deſirous of puſhing matters to extremity and extravagance, as the ſureſt method of effectuating its deſtruction, and ſo I once inclined to think.

But, upon further conſideration, I ſuſpect that this is a miſtake; for I find that Mercier, in his book on Rouſſeau, publiſhed in 1791, ſtrongly recommends the meaſure. Now the ideas and plans of this author have almoſt all been adopted.

Beſides, ſeveral of the ſpeakers on the King's caſe, and particularly Paine, contend expreſsly, that it was neceſſary for France that revolutions ſhould be univerſal, otherwiſe

wiſe ſhe could not derive all the benefit from the revolution that was intended, but muſt continue to maintain armies and fleets as formerly; and Paine does, in delivering his opinion, expreſsly comprehend this country.

This decree was moſt injudicious and premature. The French ſeem to have ſuppoſed that all nations would catch the enthuſiaſm of liberty as ſoon as they promiſed them aſſiſtance; but they ought to have conſidered that ſome nations were not at all oppreſſed, ſome not ſo much as they, and none ſo enlightened (as they expreſs it.) They ought, therefore, to have contented themſelves with exhibiting the example of a Republic to other nations. Had they done ſo in peace, it probably would have been followed in time almoſt every where on the continent, though not in this country, on account of the conſtitution it already has.

But this decree is not the only meaſure by which they have done infinite harm to the cauſe which they meant to forward, and indeed

indeed to that of reformation in all other kingdoms. Had its moſt inveterate and cunning enemies, been to direct the French to meaſures the moſt hoſtile to their intereſts, they could not have dictated a ſeries of proceedings better adapted to the purpoſe. By the burleſque appellations which they aſſumed, and the profuſion of blood which they ſhed, they have rendered Democracy both ridiculous and hideous, and ſatisfied all thinking and impartial men, that like Death, it is more terrible when ſeen near than at a diſtance.

From their conduct, however, ſince the fall of Robeſpierre, there ſeems to be great reaſon to hope, that they will, in future, pay more regard to the principles of juſtice and humanity, and thus pave the way for peace and good will towards men being reeſtabliſhed on earth *.

Of

* Whether Robeſpierre and his accomplices have publiſhed any vindication of their ſanguinary proceedings I do not know; if they have, none of them have reached this country. The only apology for them I have met with, is an involuntary one that

Of the French War.

BELLA NULLOS HABITURA TRIUMPHOS. LUCAN.

IT appeared to me that this country had a manifeſt intereſt, and a clear title, to interpoſe

that has eſcaped Dumourier in his Memoirs, vol. II. p. 195. Hamburgh edit. 1794, he ſays, "Si on veut examiner avec ſang "froid la progreſſion de cette revolution, on verra que la *guil-* "*lotine* en activité eſt le mobile d'exaltation du patriotiſme "Francais. Le ſpectacle de têtes coupées, de corps en lam- "beaux, promenés dans Paris et dans d'autres villes, a rempli "les uns de terreur, et les autres d'une audace barbare; mais "il a toujours conduit à un but deciſif, c'eſt d'amener au "même point les uns par la terreur, les autres par la neceſſité "d'aſſurer leur impunité, en multipliant les meurtres. *Mais* "*enfin cette guillotine a aggloméré la nation en maſſe, et la met en* "*etat d'exécuter des choſes etonnantes.*"

If ſo, the bloodſhed may be excuſed upon the ſame principle that negro-ſlavery is.

According to the ariſtocratic author of a very artful pamphlet, entitled "Apologie des projets et de la conduite des chefs "de la Revolution Françaiſe," p. 194.) the profuſion of blood which the Revolution would coſt, was foreſeen and juſtified by the projectors of that Revolution before it was accompliſhed; he aſſerts, "Clement Tonnerre diſoit avant la Revolution, "comme pluſieurs de ceux qui y travailloient avec lui, qu'im-

poſe for the protection of Holland from the invaſion of Dumourier, which ſeemed to be unprovoked and unjuſt. At the ſame time, the war, even to that extent, might, and ought to have been, either prevented altogether, or ſtopped after it had commenced, by negociation :---prevented, as the French would have agreed to abſtain from making war on that country, if we would have agreed to abſtain from making it on them: ſtopped, as the French, after they were repulſed from that country, would have agreed to confine themſelves within their own territory.

But the invaſive war againſt the French appeared to me inglorious and injudicious to the laſt degree. Inglorious, to attack a ſingle nation with the coaleſced armies of ſix powerful ſtates;---Auſtrians, Pruſſians, Spaniards, Italians, Dutch, and Britiſh. It is human nature, in all conteſts, when an over match is perceived, to favour the weak ſide.

" porte qu'il periſſe deux millions d'hommes pourvou que la " France ait une bonne Conſtitution;" and he finds great fault with the ſentiment.

ſide. In the honourable war which this country waged with France, under the late Lord Chatham's adminiſtration, I panted for victory, and exulted when it was obtained; but in the American and French War the conteſt ſeemed ſo unequal and unfair, that I confeſs I never had the ſame anxiety to hear that our armies were ſucceſsful, and I was aſtoniſhed that ever a cannon was fired by way of triumph.

It appeared to me that this war was moſt injudicious; as by it, to us, nothing could be gained equal to the expence of men and money it would coſt; and much, nay all, might be loſt.

Nor could I ſee the leaſt probability of ſucceſs. What force the enthuſiaſm of liberty gives to a ſmall number of men we had experienced in the American war! but the French, from their population, (agreed to be twenty-ſix millions) muſt, at leaſt, have had five millions of men able to bear arms; a force twenty times greater than any that could be brought againſt them. Any aid that could be obtained by the cruel expe-

dient of kindling a civil war among them, was, I ſuſpected, inconſiderable; and, beſides, that meaſure, by leading the royaliſts to diſcover themſelves, would, if they were overpowered, prove concluſive againſt the re-eſtabliſhment of monarchy, which the Allies had in view.

I could not approve of the mode of carrying on the war, in ſeveral reſpects; particularly that of Starvation, as it was called.—France had, no doubt, much more to fear from famine than force: but I had no notion that either humanity or warlike juſtice, ſanctions an attempt to ſtarve a whole nation indiſcriminately. That, however, was our intention; for we inſiſted with all the neutral nations, who had been in uſe to ſupply France with food, that they ſhould deſiſt from ſelling it to them: the conſequence of which demand, if complied with, muſt have been the cruel death of royaliſt friends, as well as of republican foes; of at leaſt fifteen millions of old men, women, children, and ſucking infants If aſſaſſination be, as all men are agreed, very bad, ſtarvation muſt be worſe; for the aſſaſſin can

can ſelect, the ſtarver cannot. I cannot allow myſelf to ſuppoſe, that the Miniſters who adviſed that meaſure (who, as men, poſſeſs much generoſity of temper) have attended to theſe ſad conſequences; or, if they did, they muſt not have expected that they would enſue.

They probably knew that the attempt would prove abortive, and made it merely *in terrorem.* I am happy to ſee, from a late order of Council, that it has been departed from; and (if the execution of it was really intended) I hope from repentance, not compulſion.

War, as practiſed by all modern and moſt ancient nations, has been the very reverſe of a noble exertion; for they have always held it fair to bribe the Generals of the enemy's armies, and the Governors of his towns, to betray their truſt, and to excite his ſubjects to rebellion, &c. If any individual were to behave in a duel, or any tranſaction, as his nation does in war, he would be univerſally deteſted and ſhunned; but the mode of carrying on this war againſt France,

France, has been peculiarly ungenerous; even the forging their aſſignats has been ſtooped to by ſome of their enemies.

It appears very clear to me, that not only old men, women, and children, ought to be ſpared in war, but merchant ſhips too. On land, private property is reſpected, and public property only is ſeized. Why ſhould a different rule obtain at ſea? This idea has been ably and eloquently ſupported by Linget, in his *Annales Politiques.*

America.

America.

THE American Revolution was the firſt important one which, for ages, attracted the notice of all thinking men, and a mighty one it was. I thought, from the firſt, that, if that brave and virtuous people were ſucceſsful, and a complete revolution took place, by means of which a proper republican government might be eſtabliſhed, ſuch an important event would have great effects over all the globe.

From the beginning of that diſaſtrous war, it ſeemed to me that Britain would be foiled in the conteſt: I ſaid ſo to many at the time; but a great majority of the people believed, or pretended to believe, the contrary.

The reaſons for my forming ſuch an opinion were,—the immenſe diſtance between the parent ſtate and its colonies; the probable

bable interference of foreign powers, and, above all, the cauſe that the Americans were engaged in, which was ſuch as to ſtimulate ſo great a country to make great exertions.

The infatuation of this country at that time was almoſt incredible. I remember, that one evening in the ſpring preceding the famous battle of Bunker's Hill, I ſupped with a friend, and found at his houſe, among others, a Colonel who had made a fortune in the Eaſt Indies, and was reckoned a very ſenſible man. He and I, in the courſe of converſation, got into a diſpute about America; and, in the heat of argument, he offered to bet me L. 200, that America would be conquered without two hundred men being killed. In the ſummer, however, (no doubt much to the diſappointment of this ſanguine veteran) accounts were received of that memorable battle, which was the firſt, and it appeared from the Gazette, that we had one thouſand men killed and wounded.

Carra, in a report which he made ſome years ago, propoſed, that the French ſhould attempt the emancipation of South America, and

and ſeveral other enterpriſes of importance to the globe, on the ſuppoſition, that the United States of America and Great Britain would league with France for the purpoſe of attaining ſo deſirable an object. But America has thought proper to remain neutral; and Great Britain has exerted herſelf to the utmoſt to cruſh the ſpirit of liberty every where; nay, even made a great ſtruggle to ſupport Continental deſpotiſm and ſuperſtition.

It is impoſſible to ſay what good to mankind theſe three great Powers might have done, had ſuch a league been formed on a ſolid baſis*.

In 1774, the common people in America refuſed to pay taxes, and a civil war was almoſt the immediate conſequence. The Americans, I am informed, are divided into political parties, ſuch as are to be found

* See, on this ſubject, Mirabeau's Confidential Letters, See Barlow's Advice to the Privileged Orders, Part II.

in moſt of the ſtates of Europe; they are called Federaliſts and Anti-Federaliſts; the latter are for more frequent elections, againſt funding, &c. this ſome aſcribe to the immenſe influx of emigrants.

Of

Of Emigrants.

" IT is very dangerous (ſays Machiavel) to " truſt to thoſe who have been baniſhed " from their country: you may depend up- " on it, that, if they can get themſelves re- " ſtored by any other means than yours, " they will deſert you, and attach them- " ſelves to others, whatever they may have " engaged to perform to you. As to their " promiſes and hopes, they are fallacious; " for, ſo extreme is their deſire to return " home, that they believe much which is " falſe, and add a great deal to it them- " ſelves. What they believe, and pretend " to believe, will fill you with vain expecta- " tions; but, if you proceed upon them, " you will incur expence to no purpoſe, and " embark in undertakings that will ruin " you."

DISC. ON LIVY, II. 31.

This author has been dead theſe twenty years; but every perſon, not informed of that circumſtance, would naturally ſuppoſe, on reading this, that he had written during the late American, or preſent French war.

a strange anachronism (Machiavel died in anno 1530

Of

Of the New French Calendar and Almanack.

THEY are more aſtronomical than ours, and have alſo their political object explained in the Preface to the Calendrier, which is very well written.

The Abbé Pluche, in his Hiſtory of the Heavens, maintains, and, I believe with reaſon, that the Egyptian groteſque figures, for example, a Man with a dog's head, &c. were a ſort of Almanacks indicating the time of the increaſe of the Nile, &c. As the French have now, in their Almanack, oppoſite to every day in the year, a plant, an animal, or an inſtrument of huſbandry, it would, if engraved, reſemble not a little an Egyptian Almanack. It is curious to obſerve how very ancient faſhions and practices are revived.

They have but five holidays (fetês) in the year; that of Virtue, Genius, Labour, Opinion, Rewards. Every fourth year they are to have national games.

This

This is much better ſenſe than creating holidays on account of events which pleaſe at the time. We have ſeveral that are very needleſs. Men, in appointing ſuch, have not conſidered, that, if future generations were to proceed in that way, all the days in the year would, in proceſs of time, become holidays.

Linget, in his Annales Politiques, II. 180. after approving very much of the abolition of ſeveral holidays which had recently taken place, maintains *, that no blame can attach to thoſe who introduced a great number of holidays; their motive, he ſays, was humanity, not ſuperſtition; for, at that time, the common people were *Serfs*, *adſcripti glebæ*, whoſe labour was entirely for the benefit of the maſter, who gave them little more than bare maintenance. It certainly was, therefore, humane to diminiſh the number of working days at that time; but now, that the common people are free, it is neceſſary to increaſe them, as they have, in general, even by induſtry, little enough to ſupport themſelves.

* In 1778.

ANACHARSIS

ANACHARSIS CLOOTZ,
The Orator of the Human Race.

I DISCOVERED, on reading the Mercure de France, that the reaſon of calling Clootz (who was guillotined in Spring 1794) the Orator of the Human Race, was the following ſingular incident:—At the ſitting of the National Aſſembly, on the 19th June 1790, at which, nobility, arms, and liveries, were aboliſhed, a body of men entered, compoſed, not only of ſome of all the nations in Europe, but of Arabians, Chaldeans, Gentoos, Turks, Moors, &c.

"This Congreſs (the Mercure ſtates*) "announced itſelf to be empowered by all "the ſtrangers then reſiding at Paris. It "ſpoke in name of the Univerſe (to tran-"ſlate

* See No. 20.

" ſlate literally) by the mouth of Mon-
" ſieur de Clootz, of the Duchy of Cleves,
" and nephew of Monſieur de Paw, author
" of the Philoſophical Reſearches. One
" Aſiatic (it is ſaid) paid a particular com-
" pliment; but as it was half French, half
" Arabic, it was only underſtood by the
" learned."

Sabatier, in his Journal, aſſerts, that the Chaldean was an impoſtor: he ſays, " One day a man, who miſtook Liancourt for Biancourt, demanded from him money; on which the Duke anſwered, he knew nothing about him: He replied, " I am the perſon who played the Chaldean." Madame, *or* la Citoyenne Rollande, tells the ſame ſtory; and alſo mentions, that Clootz ſupported the moſt extraordinary doctrines and theories, was ſuſpected of being a ſecret enemy to the revolution, and conſidered as a perſon who inſtigated the French Aſſembly to extravagant meaſures, in order to make it appear ridiculous and diſguſting. If this be really true, he moſt undoubtedly deſerved his fate.

There

There certainly can be no doubt, that, in consequence of this assembly of people from so many different parts of the universe, the French principles have been disseminated over the globe.

PLATO's *Republic**.

PLATO is not a friend to what is called the Liberty of the Preſs, for he ſubjects poems to the controul of a licenſer†; nor is he friendly to perfect toleration, for he is of opinion, that all Atheiſts ſhould be impriſoned for five years, and put to death at the end of that period, if they be not then converted.

He

* His method of Dialogue is far from being pleaſing. It occaſions a moſt unneceſſary waſte of words, and a moſt diſguſting flattery to the victorious diſputant.

† Plato's ſeverity to Poets proceeded, perhaps, from his attachment to Egyptian opinions. For we are informed by Dion Chryſoſtom, p. 156, edit. 1604, that that nation could not endure poetry

The very unpoetical aſpect of their country, may, perhaps, account for this ſingular taſte of the Egyptians; for, even when fertiliſed by the Nile, it is inundated, and rendered juſt like a Dutch town; at other times it is quite burnt up from want of rain. (See a very good deſcription of it in Volney's Travels, Vol. I. c. 18.)

He thinks that all citizens ſhould be divided into four claſſes; to the firſt, he allots as much property as is ſufficient to put them above poverty; to the ſecond, double; to the third, triple; and to the fourth, quadruple; but what the laſt claſs have above that, is to go to the State. Paine's ſyſtem ſeems to be ſomewhat ſimilar to the laſt idea ſuggeſted by Plato; for he holds, that all eſtates, above L.10,000 a-year, ought to be taxed to the full value.

There are many juſt obſervations, and noble maxims in this work of Plato; particularly as to the neceſſity of attending to education, and the evil conſequences of exorbitant wealth.

Of the Liberty of the Preſs.

MERCIER, in one of his books*, gives the picture of a man wearing a maſk, as a puniſhment for having written a bad book, (un mauvais livre) " quand je dis mauvais, (he adds) Je ne parle pas des defauts de " ſtyle ou d'eſprit: Nous diſons ſeulement " qu'il a mis au jour des principes dange- " reux, oppoſés a la ſaine morale, a cette " morale univerſelle qui parle a tous les " cœurs †."

In the very ſame chapter, however, he aſſerts, that the Liberty of the Preſs is the ſtandard of civil liberty. Now, what man in

* See L'an deux Mille quatre cent quarante, Vol. I. c. x. p. 50, edit. 1787.

† " When I ſay bad, I do not ſpeak as to the ſtyle or " ſpirit; I mean only dangerous principles, inconſiſtent " with ſound morality, which ſpeaks to all hearts."

in his ſenſes would run the riſk of publiſhing his thoughts, if the law of the Preſs were conceived in ſuch vague terms, if he could be accuſed of, and puniſhed for ſupporting what might be conſidered to be dangerous principles, or inconſiſtent with univerſal morality*? This author, before delivering a ſentiment ſo repugnant to the Liberty of the Preſs, ought, at leaſt, to have given us an example, or two, of what he conceived to be dangerous principles; but this he has not ventured to do, perhaps wiſely.

Indeed he himſelf maintains, in this very book, a doctrine, which, according to his notions of the Preſs, ought to ſubject him to puniſhment; he contends for the liberty of divorce; and aſſerts, that it was allowed among Chriſtians till the ninth century, when it was aboliſhed by Pope Nicholas.--- Now, many will be of opinion, that this doctrine is both dangerous and immoral.

My

* As to what is Univerſal Morality, ſee Montaigne, II. 12.

My ideas on this ſubject are ſhortly theſe: I think, that puniſhment, or cenſure, ought to be inflicted on an author only when the publication is intended to calumniate or abuſe private individuals; and that all general doctrines upon public affairs, or ſpeculative ſubjects, ought to be allowed to undergo an univerſal and unlimited diſcuſſion. This is certainly a plain and ſimple rule to go by, and it is likewiſe juſt, as it is a publication of the firſt kind only that can proceed from malice.

Of

Of Labour.

THERE was, in many parts of Scotland, a great ſcarcity of coal, in the year 1793. Williams, in his Mineral Kingdom, (publiſhed in 1789,) ſounded the alarm to no purpoſe.

This author maintains, that the exportation of coals ought to be checked; becauſe, he ſays, the coal mines are exhauſted in many places. He aſſerts, that, at Newcaſtle, near the ſea, they are wrought at a very great depth; and that coals are brought for exportation, even from places twenty miles up the country, by waggon ways*.

Monſieur de Paw, in his Rech. Phil. ſur les Grecs, vol. I. ſect. 8. *in fine*, makes this remarkable

* Vol. I. p. 158. et ſeq.

markable obſervation:—" Deja on com-
" mence a prevoir les revolutions qui chan-
" geront toute la face du monde politique,
" des que les mines de charbon et les tour-
" bieres ſeront epuiſée. Alors pluſieurs
" villes tomberont en ruine: pluſieurs con-
" trées ſe depeupleront et on ſera meme
" obligé d'en abandonner quelques unes
" aux betes ſauvages, pour ſe procurer des
" forets."

The coaliers have been much blamed for their great inclination to idleneſs; but the manner in which they work the mine is ſo very diſagreeable, that it is not ſurpriſing they ſhould be averſe to keep conſtantly at it. It is certainly the mode of working coal that creates a ſcarcity of coaliers, and this ſcarcity is one of the cauſes of the want of coal. A very intelligent coal-maſter told me, that a coalier was not reckoned a creditable employment; ſo much ſo, that a girl, not a coalier, was not fond of marrying a man bred to that profeſſion, and preferred any other tradeſman, even with leſs money. What likewiſe proves their diſlike to the work is, their ſtrong inclination to inliſt;

enliſt; ſeveral Colliers were known to have gone into the army, who earned twenty-five or thirty ſhillings a-week.

All this ſhews, that the obliging men, to follow the profeſſion of their fathers, or dividing them into caſts, to each of which a particular department in ſociety is aſſigned, has its advantages.

By doing ſo, the community is certain of having all the different kinds of work performed; ſome of which, though abſolutely neceſſary, are really very diſguſting, and, perhaps, ſomewhat diſtreſſing to the work-people. When ſociety is ſo much improved and refined, that high wages can be earned for work which is not diſagreeable, dangerous, or degrading, a difficulty muſt often ariſe of getting men to enter, or perſiſt in that which is, perhaps, both unpleaſant, contumelious, and perilous.

In conſequence of this, higher wages muſt, in time, be given, to induce people to accept of ſuch employments; ſo high, indeed, as probably to exclude the poor from purcha-

ſing the commodity, which, if it be a neceſſary of life, muſt be a very great calamity. And the miſery is, that even high wages will not always procure hands; for, ſuch is the nature of man, that he will, frequently from pride, prefer a leſs profitable employment, which is creditable, to one that is more lucrative, if not ſo.

This being the caſe, it would ſeem wiſe, juſt, and expedient, to take ſome proper and prudent meaſures to encourage people to follow ſuch profeſſions, when they are eſſential and uſeful to ſociety, by certain privileges, immunities, or ſome ſort of premium; otherwiſe, the inevitable conſequence muſt be, that either a total, or partial ſtoppage, muſt ſometimes occur.

Theſe obſervations have, hitherto, been confined chiefly to Colliers. It, however, merits conſideration, whether it be not expedient, in all great manufactories, that thoſe who employ a vaſt number of men, women, and children, in occupations which ſoon ſubject their bodies to debility or diſeaſe, and thus occaſion a great number of poor, ought them-

themſelves to pay the whole expence of maintaining them, or, at leaſt a very great proportion of it?

According to my information, the coal-maſters of Scotland have always maintained their poor. Why ſhould not the proprietors of cotton-mills, iron-works, and other great manufactories, do the ſame?

Helvetius maintains, that all men may be equally happy, or nearly ſo, notwithſtanding the great inequality of conditions;---that all are ſo, when ſatisfying the natural deſires of hunger, ſleep, &c. which occupy often ten, or twelve hours, of the twenty-four; that the degree of happineſs or miſery, depends on the employment of the remaining ten or twelve hours, which conſtitutes the difference between a riſing and ſatisfied deſire; that labour is an agreeable occupation, if it be not exceſſive; and that, therefore, the poor man has an advantage in this reſpect over the rich, whoſe intervals (from his having nothing to do) are filled up with *ennui*, that is, the uneaſineſs which the mind feels from want of employment;

ment or, as Dr Johnſon expreſſes it, " the horrors of vacuity."

This idea ſeems certainly juſt, though new; he ought, however, to have added an exception as to labour which is truly diſagreeable and unwholſome, not to ſay degrading. There is one pleaſing reflection, which ariſes from the thought, that it will probably convince the bulk of mankind, that they muſt be very much miſtaken, if they envy the rich, or fooliſhly ſuppoſe, that Happineſs is as unequally diſtributed in this world as Riches.

Of

Of the Highlands of Scotland.

I HAVE often heard, that the ſubſtitution of ſheep, in place of cattle, in the Highlands of Scotland, tends much to diminiſh the population there. In order to aſcertain how the fact ſtood, I aſked a Gentleman, well acquainted with this part of the country, and who has preſided over the Board of Agriculture, whether this was really the caſe? He ſaid it was a miſtake; for, as ſheep, by their wool, afford materials for manufactures, conſequently, if proper uſe were made of their fleece, the late introduction of ſheep farms, far from diminiſhing, would be the means of increaſing population. The inference, from what he ſtated, ſeems to be, that the ſubſtitution of ſheep for cattle would certainly depopulate; but that, if woollen manufactures were eſtabliſhed in that part of the kingdom, the people, driven from the country from want of work, in conſequence of ſuch ſubſtitution, would, as manufacturers,

rers, be removed to, and multiplied in towns. Altho' theſe were the ſentiments of this official Gentleman, yet I found, in a converſation I afterwards had on the ſubject with another intelligent perſon from that part of the country, that he was of a very different opinion. He maintained, that the idea of eſtabliſhing a woollen manufactory there was chimerical; and that the introduction of ſheep-farms into the Highlands would be the means of depopulating the country very much; for that no ſuch manufacture ever had been, or could be, eſtabliſhed, as this part of the country was not proper for it. He agreed with me too, in thinking, that the diminiſhing the population of the Highlands was a very great loſs to the country; as, in this way, one of our chief nurſeries for men in the time of danger, would be very much weakened; and that for this, as well as for other good reaſons, Government ought to have been at expence in preſerving ſuch a hardy, and truly war-like race of men; and, on that account, have made an allowance to thoſe on whoſe eſtates they were born and bred, and who now, from pecuniary motives probably, found it convenient to adopt this

new

new mode of farming. No very conſiderable ſum, it is believed, would have been ſufficient to indemnify theſe gentlemen, and it would certainly have been very well beſtowed; for it ſhould always, with pleaſure, be remembered who fought our battles in Lord Chatham's honourable wars—it was the Highlanders, as he himſelf boaſted in his uſual eloquent manner, in the Houſe of Commons.

Thoughts

Thoughts on the Right of Patronage.

WRITTEN IN 1766.

Toi qu'un injuſte orgueil condamne à la baſſeſſe
Toi qui, nè ſans ayeux & vivant ſans molleſſe,
Portes ſeul dans l'etat le fardeau de la loi
Et ſers par tes travaux la patrie & ton roi
D'utiles citoyens reſpectable aſſemblage
Que dedaignent les cours, mais qu'eſtime le Sage;
Peuple j'oſe braver cet inſolent mépris:
D'autres flattent les grands; c'eſt á toi que j'ecris.
——————— Epitre au peuple par Thomas.

IT is propoſed, in the following pages, to conſider the Right of Patronage as at preſent eſtabliſhed and exerciſed in Scotland, entirely in a prudential and political point of view; and to inquire, with impartiality, freedom, and temper, whether it be conſiſtent with the intereſt of the country, the crown, and the clergy?

All

All men, without exception, are ſubject to a variety of diſtreſſes; *the many* who are *poor* ſuffer much more than *the few* who are *rich;* hard labour and want having fallen to their lot, and therefore they have peculiar temptations to murmur, and repine at the condition of humanity.

Such being the ſituation of men, it is natural for all to liſten with attention and eagerneſs to religion, which promiſes them, on certain conditions, endleſs felicity in a future ſtate: but, generally ſpeaking, religion meets with a much better reception from the poor than from the rich. The poor are attached to it cordially, and no wonder, as nothing can have a greater tendency to ſoothe and ſolace thoſe who ſtoop under the preſſure of fatigue, penury, perhaps oppreſſion, than aſſurances that, in another world, a very different diſtribution of things will take place. But the rich, too frequently from diſlike to the conditions, or diſbelief of the doctrines of religion, do not rank themſelves among its votaries. It would be needleſs to enlarge more upon this difference between the rich and the poor, as its reality

cannot be diſputed either by the men of the world or by the religious: not by the former, becauſe daily experience diſplays it; not by the latter, becauſe numberleſs texts of Scripture prove it. The reader will be pleaſed to mark well this difference, becauſe it is the baſis on which great part of the following argument will be reſted.

On conſidering attentively what has been hinted, it will be obvious that religion ought to be reckoned an object of great conſequence to thoſe who have the government of mankind: for, as the impreſſions that it makes are moſt forcible and powerful, if the people whom it actuates take a wrong turn, the ſtate may be endangered or overthrown; whereas ſociety may reap much benefit from it, when properly directed. For it reconciles the bulk of mankind to the inequality and hardſhips to which they are ſubjected from the imperfection of political inſtitutions, it has a good effect upon their morals, and ſupplies the defects of human laws. This has been denied by ſome ingenious and impious authors; but a very ſlight obſervation of mankind will refute them. Of what prodigious

uſe

uſe to Society is one ſingle effect of religion, viz. the ſacred regard for an oath? without which it is evident, that Juſtice would often be diſappointed, both in civil and criminal caſes, for experience ſhews, that people will deliberately and judicially aver falſehoods, to which however they will not ſwear.

What has been ſuggeſted, with what will occur to the reader*, muſt, it is thought, evince, that the end which a ſtateſman ſhould aim at in countenancing religion, and appointing a ſet of men to explain and inculcate its doctrines, is *the comfort and inſtruction of the common people.*

It is not material to inquire whether the right of patronage owes its birth to the uſurpation of laymen, or to the policy of prieſts, in order to encourage the erection and endowment of churches. He who built or endow-

* "Il ne faut pas toujours tellement épuiſer un ſujet "qu'on ne laiſſe rien à faire au Lecteur. Il ne s'agit pas "de faire lire, mais de faire penſer." De l'eſprit des loix, vol. II. liv. xi. c. 20.

ed a church muſt have done ſo from a pious intention, and therefore there could be no danger in allowing him to name the perſon that officiates in it; becauſe it never could happen that the religious donor would counteract, by the ſettlement of a miniſter, the end he muſt have had in view in erecting a church. But then ſuch privilege ſhould have been perſonal, not transferable: for it is apparent, that as ſoon as it was allowed to deſcend to heirs by ſucceſſion, or to be tranſferred by voluntary or legal alienation, it might come into the hands of perſons who, being deſtitute of the piety of the original founder, would have no other object but the proviſion of a friend or dependent; and, in fact, that ſuch is the end which patrons commonly have in view, is indiſputable. At the ſame time, it merits particular obſervation, that, in countries, where a religion prevails, in which there is a hierarchy, much external ſhow and ceremony, and, above all, particular forms almoſt on every occaſion, the right of patronage never can be ſo abuſed, nor conſequently become ſo great a grievance, as in this country, the religion of which admits of no hierarchy, little or no ſhow and cere-

ceremony, and no forms whatever. In Popiſh countries, and even in England, the ſermon is the moſt inconſiderable part of the ſervice; in Scotland it is the chief. In Popiſh countries, and even in England, the clergyman has his duty preſcribed to him by forms, according to which he muſt pray, marry, baptiſe, &c. In Scotland he is confined by no form, conſequently much more depends upon his perſonal abilities, and therefore there is infinitely more room for a *delectus perſonae* in this country, where Preſbytery is eſtabliſhed, than in the countries where Popery or Epiſcopacy prevails.

Accordingly the Preſbyterian religion, and all the eccleſiaſtical forms and ſteps of procedure in ſettling a miniſter, obſerved at this day, plainly ſuppoſe that the miniſter to be ſettled is the choice of the people in the pariſh for whoſe benefit he is intended.--- Theſe forms, though quite inconſiſtent with the preſent method of ſettlement, in virtue of preſentations from patrons, are ſtill kept up and gone through on every occaſion: particularly a call muſt be moderated, (as the phraſe is) and ſuſtained before the ſettle-

ſettlement can proceed*, though, perhaps, ſubſcribed only by the exciſeman of the pariſh, or the patron's factor or gardener; while, at the ſame time, all the people in the pariſh, high and low, rich and poor, heritors, elders, and heads of families, may have to a man entered their diſapprobation, and diſſent. That a paper ſubſcribed by an exciſeman, the patron's factor, or even by two or three heritors, perhaps non-reſidents, ſhould be called a Call, when all the reſiding heritors, elders,

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* The ſtyle of a Call runs as follows:—"We the heritors, elders, and magiſtrates, of the town-council of (if to a burgh) being deſtitute of a fixed paſtor, and being moſt aſſured by good information, and *our own experience* of the *miniſterial abilities*, piety, literature, and prudence, as alſo of the *ſuitableneſs to our capacities* of the gifts of you Mr A. B. preacher of the goſpel, or miniſter, at C. have agreed, *with the advice and conſent of the pariſhioners* foreſaid, and concurrence of the Reverend Preſbytery of D. to invite, call, and entreat; likeas, we, by theſe preſents, do heartily invite, call, and entreat you, to undertake the office of a paſtor among us, and the charge of our ſouls: And further, upon your accepting of this our call, promiſe you all dutiful reſpect, encouragement, and obedience, &c." See Stewart's Collections, Tit. 1. where alſo the other ſteps of procedure are ſet forth.

elders, and heads of families, have declared their averſion and diſlike to the preſentee, is a ſtrange abuſe of language, and to find it a Call, and ſuſtain it as ſuch, is ſurely a great abuſe of judicial power.

It is plain, therefore, to common ſenſe, that the right of patronage is incompatible with the Preſbyterian religion. One of them muſt yield, for by endeavouring to keep up both, we run into much abſurdity, contradiction, and indecency.

From what has been argued, it ſeems to follow, that the end of ſettling a miniſter in a pariſh, which is the comfort and inſtruction of the common people, cannot be attained, if an unlimited exerciſe of the right of patronage be allowed: becauſe, for the moſt part, patrons will not have that in view, but the proviſion of a friend or dependent. In fact, it is found that the preſent method of ſettlement does by no means anſwer the end. If a late calculation be right*, 120,000 of

* This Paper was publiſhed in 1766.

of the people of this country have left the eſtabliſhed church; and, it cannot be denied, chiefly on account of patronage. A Preſbytery of Relief, (as it is juſtly called,) has made its appearance, and carries off vaſt numbers even of our more moderate people, becauſe it differs only from the eſtabliſhed church as to patronage.

Every time the right of patronage is improperly exerciſed, it is certain that more of the people of this country will take refuge with that preſbytery, which threatens to be the moſt formidable enemy that the eſtabliſhed church ever ſaw, as it muſt very ſoon ingroſs a great majority of all the ſerious people of Scotland.

It has been often ſaid by the advocates for patronage, that the Seceders would in time loſe their ground, and our people tire of leaving the eſtabliſhed church.

But it was never reaſonable to expect this, ſince patronage is abſolutely inconſiſtent with the Preſbyterian religion. Thoſe commonly called Seceders have ſplit among themſelves, yet

yet there is no reaſon for ſaying they have loſt ground; and now that a Preſbytery of Relief has been tolerated, which differs from the eſtabliſhed church in nothing but in this ſingle point, there is no doubt that the defection will grow ſtronger and ſtronger every day, as patronage is inconſiſtent with the Preſbyterian Religion, and as the common people of this country are much attached to that religion.

There is no arguing againſt the fact, that, within theſe two or three years, ſo far from tiring of leaving the eſtabliſhed church, the people in this country have been quitting it in great numbers, and muſt continue to do ſo, unleſs cauſes ſhall fail to produce their uſual effects.

It has been often urged by the advocates for Patronage, that, if the church beſtowed proper care and attention in licenſing and ordaining young men, there could be no room for complaint; as, then, it would not be in the power of a patron to abuſe his right by preſenting an improper perſon.--- But it is obvious, that thoſe who can ſe-

 rioufly

riouſly uſe, or be much influenced by this argument, have very little knowledge of the world, as it is evident that, in every profeſſion which is numerous, many, though not properly qualified, muſt be admitted. No man would chuſe to truſt his cauſe to every advocate, or his life to every phyſician, that has been admitted into the Faculty; and it is not reaſonable to expect more perfection in this reſpect in divinity, than in law or phyſic; beſides, it ought to be obſerved, that different pariſhes require different paſtors; ſo that a patron may abuſe his right by preſenting a perſon very well qualified for one place, to another in different circumſtances.

Fraxinus in ſylvis pulcherrima, pinus in hortis,
Populus in fluviis, abies in montibus altis.

It alſo ought to be attended to, that, though the right of patronage muſt always be odious to preſbyterians, yet it has been rendered more ſo of late, by the great change in the ſtyle, manners, ſentiments, and ſermons of the clergy. They are, no doubt, now more learned, more philoſophic,

loſophic, and more celebrated in the republic of letters, than they were half a century ago; but it does not therefore follow, that they will give more comfort and inſtruction to the common people. The conſequence naturally to be expected from the alteration was, that they would not be inclined to preach on ſubjects agreeable to the people, in a ſtyle ſuitable to their capacities, nor conform themſelves to that ſtrictneſs and auſterity of life which the notions of the common people exact. Accordingly, this is juſt what has happened; and, on that account, moſt of the younger clergy have been peculiarly diſagreeable to the people for ſome time paſt, and moſt of the *violent ſettlements*, as they are properly called, have been owing to the right of patronage being exerciſed in favour of clergymen of that deſcription. At the ſame time, theſe young gentlemen, imagining that they were unable to gain the good graces of the people, and that they would never obtain benefices, if the choice of their miniſters ſhould be left to them, have exerted themſelves to the utmoſt in ſupport of Patronage, and raiſed an outcry againſt the peo-

ple as extravagant as it is unreaſonable.—This, for a conſiderable time, made a great impreſſion on many of the landed intereſt, as well as on moſt of the ruling elders who attend the General Aſſembly; and therefore they, for ſome time, threw their weight into the ſcale againſt the people. However, it is believed, that the greateſt part of theſe reſpectable gentlemen have at length been undeceived; at leaſt, as to the ruling elders, it is a certain fact, that the deciſions * of the Aſſembly 1764, in favour of patrons, were carried by a majority of miniſters againſt the ruling elders. Nor have the younger clergy ſtopped here, but they have carried their zeal for Patronage to ſuch a height, as to perſecute ſome of their brethren, who, from a principle of conſcience, would not concur with them in enforcing preſentations.

The concluſion from what has been ſtated, is, that religion is of advantage to the ſtate; that the end of ſettling miniſters in pariſhes is the comfort and inſtruction

* In the caſes of the Pariſhes of Shots and Glaſgow.

tion of the common people; that this, ſo far from being accompliſhed, has, on the contrary, been fruſtrated by an improper exerciſe of the right of patronage; that this has obliged great numbers of the people to abandon the eſtabliſhed church, and will, in time, withdraw from it all thoſe who have any regard for religion; which, it is apparent, muſt be attended with very diſagreeable effects. This leads to the conſideration of the right of patronage, in ſo far as the intereſt of the country, the crown, and the clergy is concerned.

As to the Country, what advantage ariſes to it from the right of patronage, is not very obvious; but the diſadvantage and loſs which it occaſions is ſtriking.

It is palpably a great loſs to the country to be burdened with the charge of an additional church and miniſter in every pariſh; which, in all probability, it ſoon will be, as there are already two churches and two miniſters in many parts of the country. The maintenance of an additional church and miniſter in a pariſh, runs the tenants

nants and labouring poor into an expence which they are not well able to bear. Accordingly both they and the landholders feel it; it therefore has become not uncommon, in buying eſtates, to inquire, whether the tenants are Seceders, or attend the eſtabliſhed church.

This expence muſt, for the moſt part, ultimately fall upon the landed intereſt; and it ſeems to be plain, that nothing but the greateſt infatuation, or impoſition, can induce them to ſupport patronage by their influence. The right of patronage belongs to an inconſiderable number of landed gentlemen; it is chiefly veſted in the Crown and royal boroughs: what pleaſure then can the landed intereſt take in ſeeing their tenants and ſervants exhauſted by ſuch unneceſſary expence, in conſequence of a regulation which gives them no additional power, authority, or any advantage whatever; but, on the contrary, makes them perfectly inſignificant, and mere cyphers in a matter in which they certainly ſhould have a great deal to ſay?

It

It may, perhaps, be obſerved, that many of the landed gentlemen are very indifferent for their own part what miniſters are ſettled: if ſo, they ſhould never thwart the inclinations of the common people, but endeavour to give them a miniſter as agreeable as poſſible; becauſe then they will promote the end of his ſettlement, *viz.* the advancement of religion, which is both for their intereſt and that of the country in general, on account of its good effects: for, if the eſtabliſhed clergy are of no uſe in promoting that end, it ſeems to be indiſputable, that the money laid out in maintaining them is thrown away.

But if the true object in ſettling a miniſter in a pariſh be neglected, and the ſubſiſtence of a preſentee, though altogether uſeleſs, be regarded as the only end of a ſettlement; why ſhould not the landed gentlemen have votes in the appointment of miniſters, as well as in that of ſchoolmaſters and collectors of the ceſs? Is not the ſtipend of all theſe officers in reality paid by a land-tax out of their eſtates?

The

The right of patronage, as at preſent exerciſed, has a ſtill worſe effect; becauſe it has a manifeſt tendency to bring religion into contempt with the common people. What can be more ſhockingly abſurd than to ſee a miniſter of the goſpel ſettled by a troop of dragoons? What more diſguſting than to ſee a miniſter of the goſpel, though diſregarded and deſpiſed by every perſon in the pariſh, ſit down contented, becauſe, nevertheleſs, he enjoys the manſe, the glebe, and the ſtipend.

——— *Populus me ſibilat, at mihi plaudo,*
Ipſe domi nummos ſimul ac contemplor in arca.

The common people are too ſenſible not to diſcover, that the object which patrons, and others in power, have, is not the advancement of religion, nor the comfort and inſtruction of the people, but the ſubſiſtence of a friend or dependent; and that what the intruding paſtor has in view, is not to tend the flock, but to ſhear the golden fleece. This certainly ſhould be concealed (at leaſt from the people) as much as poſſible; for, if once they perceive it, there is ſome riſk

riſk that they may become diſguſted at religion, and conclude with an impious Italian, who, after being informed of the ſmallneſs of our ſtipends, and comparing them with the great benefices and dignities which the Romiſh clergy enjoy, expreſſed himſelf to this purpoſe,—" *The Church of Rome is a great* " *cheat,—the Church of Scotland a little cheat.*"

The only advantage which, it is pretended, reſults from the right of patronage, is peace and quiet. This might have been alledged, perhaps, with ſome plauſibility, when patronage was at firſt revived; but it is aſtoniſhing it ſhould be ſtill dwelt upon, now that we have had the experience of it for a number of years, during which we have been continually harraſſed with diſturbances, diviſions, and ſchiſms.

It may poſſibly be true, that, in royal boroughs, where politics and party-rage prevail, before ſettlements took place much ſolicitation and altercation would happen; but does that afford any argument againſt allowing a free choice to the people in general? It might as well be contended, that the

Houſe of Commons ſhould be aboliſhed, becauſe elections in burghs often give riſe to much drunkenneſs, corruption, and perjury. The beſt things may be abuſed.

But the allegation, that the election of miniſters by the people would occaſion diſturbance, is redargued by obſervation and experience. There are, it ſeems, one hundred and twenty ſchiſmatic miniſters juſt now in Scotland, none of whom are ſettled by preſentations, but upon a call or election by the different people who have withdrawn from the eſtabliſhed church; yet we never heard of diſſention, not to ſay diſturbance, among them at theſe elections. And though they ſhould differ ſometimes, and come to a vote, yet that would not produce any diviſion, or even a law-ſuit: for mankind are ſenſible, that when a number of people are not agreed, the diſpute muſt be ended by putting the queſtion, and thoſe who are outnumbered cheerfully ſubmit. Thoſe called Seceders have indeed ſplit among themſelves on points of faith, and have had two or three law-ſuits before the Court of Seſſion, about the property of churches and miniſters houſes, which they

they had built when united; but when had they any diſturbance or law-ſuit about the election of a miniſter?

There are many churches on the eſtabliſhment not ſubject to patronage, and they have been planted for ages without any diſturbance. In North Leith, the right of electing the miniſter is, and has been, veſted in the neighbours and inhabitants for two centuries; and yet it is a fact, that, during that very long period, they have never had any diſpute or difference among themſelves about ſupplying a vacancy. Many other inſtances to the ſame purpoſe might be mentioned, but it is unneceſſary, as the fact is as notorious as it is ſtrong, and therefore the cry againſt the turbulence and unreaſonableneſs of the people is a very great miſrepreſentation.

Before concluding this branch of the argument, it will not be improper to take notice of another topic on which thoſe gentlemen have inſiſted much, viz. that the people, or rather, as they are commonly called in deriſion, the Chriſtian People, have no ſort of right to chuſe their miniſters, and that the notions they entertain

tain to the contrary, have been inſtilled into them by clergymen over-zealous for religion, or over-anxious for popularity.

To this it is anſwered, that, as the end of ſettling a miniſter in a pariſh evidently ought to be the comfort and inſtruction of the people, it is extremely juſt and natural for them to infer that they have a right to elect him.

It is likewiſe very wrong to blame any of their miniſters for inſtilling this notion into them. It is the Preſbyterian religion which gives riſe to it, and every ſtep of eccleſiaſtical form and procedure in the ſettlement of a miniſter, muſt confirm them in it.

Beſides, the gentlemen who lay ſo much ſtreſs upon this topic would do well to conſider, whether or not the revival of patronage, by the Act 12*mo Annæ*, be conſiſtent with one of the two eſſential and unalterable articles of the Union? By the Scottiſh act for a treaty of union, 1705. c. 4. it is, "provided alſo that the ſaid commiſſioner ſhall "not treat of or concerning any alteration "of

" of the worſhip, diſcipline, and government " of the church of this kingdom, as *now* by " law eſtabliſhed." An act immediately before the Union, 1706, c. 6. after narrating that the treaty had been reported to Parliament, and that it was " reaſonable, and ne- " ceſſary, that the true Proteſtant Religion, " as preſently profeſſed within this king- " dom, with the worſhip, diſcipline, and go- " vernment of this church, ſhould be effec- " tually, and unalterably ſecured," does " eſtabliſh and confirm the ſaid true Prote- " ſtant Religion, and the worſhip, diſcipline, " and government of this Church, to conti- " nue, *without any alteration*, to the people " of this land, through all ſucceeding gene- " rations." And immediately after the Union, another act paſſed to the ſame purpoſe; and it further ſtatutes and ordains, " That this " Act of Parliament, with the eſtabliſhment " therein contained, ſhall be held and obſerv- " ed in all time coming, as a fundamental " and eſſential condition of any treaty of " union to be concluded betwixt the two " kingdoms *without any alteration thereof, or* " *derogation thereto, in any ſort, for ever.*"

There

There is indeed no expreſs mention of the abolition of patronage by the act 1690; but is it not evident, both from the words and the ſpirit of that act, that it was underſtood and intended, that the Preſbyterian Religion ſhould be preſerved unhurt, and inviolate, in every particular, as it was then? Now, ſince the right of patronage has been ſhewn to be inconſiſtent with the Preſbyterian Religion, it ſeems to follow, that the act of Queen Anne, reviving that right, was an infringement of one of the unalterable articles of the Union, and conſequently contrary to law; for *it* ſurely will not be maintained, that an article, declared to be unalterable, may, notwithſtanding, be altered. If it may, then the only other article on the ſame footing muſt fall too, and our land-tax may be raiſed above L. 48,000.

This conſideration likewiſe furniſhes a good anſwer to another common topic of declamation in favour of patronage, that it is a civil right conferred by ſpecial act of Parliament: but (ſuppoſing that this article of the Union may be altered) it is plain that this topic can be of no uſe in the argument: for the

the queſtion then is, whether the law be good or bad, ſalutary or noxious? as it ſurely cannot be maintained, that every act of Parliament that paſſes muſt ſtand for ever unrepealed. This ſeems to be a doctrine as little calculated for the times as any that can well be figured.

As to the intereſt of the Crown in this matter, it muſt be acknowledged that it has gained more by the revival of the act with regard to patronage than any other party concerned; for as the greateſt part of patronages belong to the Crown, and as an addition to the number of offices in the Crown's gift will always be thought for its advantage, it cannot be denied that the Crown has profited by the reſtoration of this right. At the ſame time, as the rigorous exerciſe of it will infallibly drive away all the ſerious people from the Church of Scotland, as that church was certainly firmly attached to our preſent happy eſtabliſhment, and, as it is by no means certain what notions the Seceders and other ſectaries may entertain, or what turn they may take, it may be doubted whether it be for the real intereſt of the Crown

Crown to oppoſe the abolition of patronage. In 1745, the Seceders appeared in ſupport of our happy eſtabliſhment, but it is believed they did ſo ,not becauſe they did not think it bad, but becauſe they thought that the other then threatened would be worſe. In 1715, and in 1745, the influence of the eſtabliſhed clergy over the people in ſupport of government was conſpicuous; but now, many of them have loſt all ſort of influence with their people, and in time, if patronage is continued, the whole of them will. This influence muſt paſs to the ſchiſmatic preachers, who, in all probability, will alter their tone, and become diſaffected whenever they find that they have the whole, or a great majority of the people, to ſupport them.

Upon this branch of the ſubject, which is ſomewhat delicate, it ſhall only be further obſerved, that a rigorous exerciſe of the right of patronage in the Crown, is, by no means, conſiſtent with the clemency ſhewn in the management of its other rights. The King is always a gracious ſuperiour.—Every man chuſes rather to hold of his Majeſty than of a ſubject. Why ſhould not his Majeſty

Majeſty be a gracious patron? And here it would be improper to paſs over a late inſtance of benignity and gentleneſs even in the exerciſe of the Royal right of patronage.

A vacancy having happened in South Leith, and the Weſt Church, the people in theſe pariſhes preferred a dutiful petition to his Majeſty, repreſenting their earneſt wiſh and deſire, to have the gentlemen, who are now their miniſters, ſettled among them; and his Majeſty was graciouſly pleaſed to give ear to their entreaties, and to grant a preſentation accordingly. An exerciſe of the Royal right in this manner would ſurely give much ſatisfaction to all concerned. It may be ſeen from the public news-papers how ſenſible the people were of the favour, and how deſirous to expreſs their gratitude to ſome of the honourable gentlemen in adminiſtration who happened ſoon after to be in this country.

Were the patronages in the Crown to be always uſed with the ſame benignity and beneficence, that thoſe juſt now mentioned were, and the other Royal rights hitherto

have been; how happy would it be for the nation that every patronage in Scotland were veſted in his Majeſty!

As to the intereſt of the clergy: That the right of patronage is diametrically oppoſite to the intereſt of that reſpectable body, ſeems to be a propoſition as plain as any that can well be conceived. The influence of the clergy with the Crown, and with the landed intereſt, ought to depend on their influence with the people. The effect of patronage is to leſſen, nay, to annihilate that influence; for, as it has already transferred many, ſo it will infallibly in time transfer the whole religious people in Scotland to the ſchiſmatic preachers: when the whole ſhall be tranſferred, what will become of our clergy? Do they imagine that the landed gentlemen will maintain clergymen for their own private edification? Do they imagine that the landed gentlemen will continue to pay a heavy land-tax, in order to ſupport a number of men that do not ſerve the purpoſe for which they were deſigned, though they be excellent philoſophers, hiſtorians, and poets?

It muſt, therefore, at firſt ſight, ſeem amazing and unaccountable, that clergymen, who in no age of the world have been accuſed of inattention to their own intereſt, ſhould deſert the people to whom they owe their riſe and exiſtence, and ſanction meaſures which muſt bring contempt, and perhaps ruin, upon their order! It ſeems impoſſible to account for the phaenomenon, otherwiſe than from there being a party among them, which has, for a good many years paſt, had the lead in church-courts. But the intereſt of that party does not conſtitute the intereſt of the body; and even that party would be ſatisfied that patronage is not for their intereſt, were they to allow themſelves to think on this ſubject with the ſame coolneſs and ability that they do on other topics.

In caſe the landed intereſt and the clergy ſhall apply for, and obtain a variation of this patronage-act, it will require much wiſdom and deliberation to put the election of a miniſter upon a proper footing; for the act 1690 is doubtleſs liable to many ſolid objections. Various opinions have been formed upon this matter, and many ſeem to wiſh

that the right of election were lodged with the heritors. That they are entitled to votes is obvious, but if the principles above laid down be juſt, the power of election ſhould not be lodged in them ſolely: for the end of ſettling a miniſter in a pariſh is the comfort and inſtruction, not of the rich, who are commonly underſtood to be the Heritors, but of the poor, that is the tenants, labouring people, &c.; and therefore it may be juſtly doubted, whether that end would be attained, if the right of election were lodged with the former. However, it is needleſs to enlarge upon this at preſent; would it were come to the ſettling a proper plan! for, though it would no doubt be difficult, yet it is ridiculous to ſay that it would be impoſſible.

In caſe the landed intereſt and clergy ſhall not apply for, or obtain a variation of the patronage-act, then it will be proper to conſider whether any method can be fallen upon to remedy, in part, a grievance that cannot be entirely removed. Poſſibly a good many patronages might be purchaſed by the people. Several patrons, it is reaſonable to think,

think, might be prevailed upon to accept of a good price for their right; and the money requiſite for building a meeting-houſe and ſupporting a miniſter, would ſurely be a ſufficient equivalent. But this ſcheme cannot be of univerſal uſe; for many patrons will not ſell, many cannot; and, in caſe a variation of the patronage-act be refuſed, the only proper relief can come from the patrons, and from the clergy.

Patrons, who are impreſſed with a ſenſe of religion, cannot, conſiſtently with their own principles, abuſe their right; and they would be much confirmed in their good diſpoſitions, by peruſing the laſt chapter of Biſhop Burnet's "Treatiſe on the Paſtoral Care." From which, by the bye, it appears that his Lordſhip conſidered the right of patronage, even in England, as a ſort of grievance.

If there be any patrons, who do not pay attention to religious matters, they, too, ſhould reflect, that the good of the country, and common humanity, require, that they ſhould not uſe their right with deſpotic rigour.

gour. That the good of the country requires this, it is hoped has been already proved; and that common humanity requires it, they muſt perceive, on thinking for a moment on their own ſituation, and that of the common people. They are gentlemen of fortune, who live in affluence and eaſe, while the common people ſtruggle with labour and want. It is a common and juſt ſaying, that, "A merciful man is merciful to his beaſt;" and indeed nothing more certainly denotes a bad heart than unneceſſary cruelty, or even ſeverity to brute animals: but, if we ſhould be merciful to all creatures, how much more ſhould we be ſo to mankind? It is undoubtedly the particular duty of thoſe favoured with high ſtation and fortune, to compaſſionate the hard fate of the people, and to ſweeten for them the bitter cup of life as much as poſſible. Thoſe who have not obſerved the common people, cannot eaſily comprehend how much comfort they receive from a miniſter with whom they are pleaſed; thoſe who are acquainted with them, know it is very great. If a morſel of oat-cake, and a draught of milk, will be reliſhed more by a poor man, if under the miniſtry

niſtry of a clergyman to his taſte, alas! why ſhould he not be indulged*?

The clergy might, if they pleaſed, do a great deal. The rich and the poor do not like the ſame ſort of ſermons; for obvious reaſons, it is impoſſible they ſhould. The poor are moſt ready to believe and embrace the doctrines of religion, but the ſplendid good works of virtue is beyond their narrow comprehenſion. What can be more incongruous, than to deſcant on charity, to a ſet of men, moſt of whom have but eightpence a-day? Diſcourſes on the vanity of riches, the danger of poſſeſſing them, the myſteries of religion, and the future happineſs of the poor, are thoſe which do, and muſt delight the bulk of mankind. By what art did Mr Whitefield draw thouſands, and ten thouſands, daily to hear him?

It

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* *Opprimete i contumaci*
Son gli 'ſdegni allor permeſſi,
Ma infierir contro gli oppreſſi
Queſto è un barbaro piacer.

Metaſt. la Clem. di Tito, A. 1. Sc. 4.

It was not by declaiming on moral ſubjects. He humbled the rich, he comforted the poor; and whoever will do ſo with tolerable ability, muſt be popular.

To conclude, a variation of the patronage-act is devoutly to be wiſhed; but if that ſhall be refuſed, ſome check, or palliative at leaſt, ſhould be thought of: for, it is too clear, that the procedure at preſent is unjuſt, inhumane, and impolitic.

An opportunity of knowing the particulars of moſt of the violent ſettlements, for ten years paſt, gave riſe to theſe reflections; their publication is owing to nothing but a concern for the people, and good wiſhes to the church of this country, and is by no means intended to ſerve or offend any party whatever.

Of

Of Religion.

In the Monthly Review for 1792, (VII. 350.) I met with the following very ſingular obſervation, taken from the Memoirs of Dr William Stahl, a German Phyſician, who was long in the Inquiſition at Goa and Liſbon: "Religion, (he ſays) in all countries, is the "aid of political government; and this is "preciſely what it ſhould not be: for, if a "government ſupports a particular religion, "(rather mode of religion) that religion will "ſupport the government; both will go hand "in hand together, and make it their point "to palliate the defects of one another; op-"preſs thoſe who are inclined to make uſe-"ful reforms, and ſpread the ſeeds of diſcord "and animoſity. In Portugal, religion ſup-"ports political government, political govern-"ment ſupports religion; and, by ſo doing, "they diſguiſe the truth from the multitude, "and make them the ſport of their recipro-

"cal corrupt intereſts; by which error, ſu-
"perſtition and injuſtice are propagated,
"ſanctioned, and conſecrated, from genera-
"tion to generation."

This paragraph has been written in a paſſion. Religion, as it addreſſes itſelf in the ſtrongeſt manner to the hopes and fears of men, muſt acquire, at leaſt during a certain period of civil ſociety, a very powerful influence over them. It can, for a long time, well ſupport itſelf without the aid of civil government; nay, it would abſorb it altogether, were not many precautions taken to reſtrain its miniſters from the attempt. Every wiſe government, therefore, will be attentive to religion. The queſtion is, what it ought to do?

If it be found that a particular religion is congenial to the government, it follows, that ſuch religion ought to be eſtabliſhed as national; and further, that every other religion ought to be proſcribed. This concludes againſt toleration, and leads to perſecution; for toleration affords to ſectaries an opportunity of drawing numbers, nay all, from

from the eſtabliſhment; which cannot be permitted conſiſtently with the ſuppoſition, that ſuch eſtabliſhment is neceſſary to the being, or well-being, of the ſtate. But then experience has proved, that perſecution, *i. e.* puniſhment, is both a dangerous and inſufficient remedy. The conſequence has been, that moderate governments have contented themſelves with endeavouring to check other religions by diſcouragements only, ſuch as diſabilities and incapacities. But if puniſhment be unable to check, mere diſcouragement muſt be leſs ſo; therefore, as the meaſure is in itſelf unjuſt, it ſeems to follow, that univerſal complete toleration ought to take place. If ſo, it may be thought that the expence (generally enormous) of a national religion ought to be ſpared, and that every man ought to pay his own prieſt, which is the rule in ſome parts of North America. For univerſal toleration ſurely implies, that the government has no political apprehenſions from any religion; and ſuppoſes that the welfare of the ſtate cannot be effected by any; therefore, the expence of maintaining a particular one is needleſs. There ought to be either an univerſal complete

toleration, or none at all; the middle method of diſcouragement is evidently inadequate to protect the favoured religion from the inroads of ſectaries. Now, if it has not utility to recommend it, juſtice it certainly has not; and therefore it ought to be diſcontinued, as it commits wrong; and creates diſcontent to little or no purpoſe.

The Pope, who impriſoned Galileo for teaching the true theory of the Heavens, has been condemned very generally, but perhaps not juſtly. There ſeems to be great reaſon for thinking, that he did no more than what a rigid regard for his religion and intereſt required; for that theory diminiſhed the dignity of the Earth, and, conſequently, that of Man, and made way for the ſuppoſition of a plurality, and, indeed, infinity of worlds, which might afford a plauſible argument to infidels.

One of the late Orthodox Philoſophers, after ſtating a variety of objections to that ſuppoſition, adds, "we muſt believe that the inhabitants of the other planets had the ſame duties to fulfil with regard to the Divinity;

" ty; but in caſe of a tranſgreſſion, ſuch as " unfortunately happened on our globe, who " had been the Redeemer to appeaſe the ven- " geance due to their crimes? Will it be ſaid, " that the puniſhment of the Croſs was more " than ſufficient to expiate the ſins of a mil- " lion of globes? We cannot doubt of it " from the extent of the ſacrifice; but then " how much ought we to glorify ourſelves, " that the Son of God made himſelf Man, " and gave to our paltry globe the preference " of exhibiting on it the exceſs of his love! " This reflection, well conſidered, muſt ex- " clude the ſyſtem of plurality of worlds, or, " at leaſt, adjudge to our earth a prefer- " ence over the other planets."—Recherches ſur les influences ſolaires et lunaires, par Mr Robert de Lo Loaza a Londres 1788.

Since writing the above, I have read Paine's pamphlet, entituled, " The Age of Reaſon;" and I find, that his chief argument againſt Chriſtianity is founded on the infinity of worlds. See p. 56. " From whence then " (he ſays, p. 46) could ariſe the ſolitary and " ſtrange conceit, that the Almighty, who " had millions of worlds, equally dependent " upon

" upon his protection, ſhould quit the caſe " of all the reſt, and come to die in our " world, becauſe they ſay one man and one " woman had eaten an apple? And, on the " other hand, are we to ſuppoſe that every " world in the boundleſs creation had an " Eve, an apple, a ſerpent, and a Redeemer? " In this caſe, the Perſon, who is irreverently " called the Son of God, and ſometimes God " himſelf, would have nothing elſe to do, " than to travel from world to world in an " endleſs ſucceſſion of death, with ſcarcely a " momentary interval of life."

The obſervation of both authors ſeems to be founded on a ſuppoſition of which there is no evidence, nor indeed probability, viz. that all other worlds are ſimilar to ours.

I have often heard it aſſerted, that the Preſbyterian Religion was democratical; but that it is by no means ſuch will appear from the following paſſage in our Confeſſion of Faith (iii. 6, 7.) " As God hath ap- " pointed the *elect* into glory, ſo hath he by " the eternal and moſt free purpoſe of his " will, for-ordained all the means thereun- " to.

" to. Wherefore, they who are elected be-
" ing fallen in Adam, are redeemed by
" Chriſt, by his Spirit working in due ſea-
" ſon; are juſtified, adopted, and ſanctified,
" and kept by his power through faith un-
" to ſalvation. Neither are *any other* re-
" deemed by Chriſt effectually called, juſ-
" tified, adopted, ſanctified, and ſaved, but
" *the elect only. The reſt of mankind* God
" was pleaſed, according to the unſearchable
" counſel of his own will, whereby he ex-
" tendeth or withholdeth mercy as he plea-
" ſeth, for the glory of his ſovereign power
" over his creatures, *to paſs by and to ordain*
" *them to diſhonour and wrath for their ſins, to*
" *the praiſe of his glorious juſtice.*" And chap.
x. §. 3. Declares, " *Elect* infants, dying in in-
" fancy, are regenerated and ſaved by Chriſt,
" through the Spirit, who worketh when,
" where, and how he pleaſeth. So alſo are
" all other *elect* perſons who are incapable
" of being outwardly called by the miniſtry
" of the word. *Others not elected*, although
" they may be called by the miniſtry of the
" word, and may have *ſome common operations*
" *of the Spirit*, yet they never truly come
" unto Chriſt, and therefore cannot be ſav-
" ed;

" ed; *much leſs can men, not profeſſing the Chriſ-*
" *tian Religion, be ſaved in any other way what-*
" *ſoever, be they never ſo diligent to frame their*
" *lives according to the light of Nature, and*
" *the law of that Religion they do profeſs, and*
" *to aſſert and maintain that they may, is very*
" *pernicious, and to be deteſted.*"

It is the intereſt of all monarchies and ariſtocracies to encourage the defence of ſuch a Religion; for as men readily believe what they wiſh, few Chriſtians will doubt of their being of the elect; and whenever they believe that few only are to be ſaved, and that all the reſt are to be doomed to diſhonour and wrath, in the next world, that muſt have a ſtrong tendency to reconcile them to inequality of fortune in this. And as they believe, at the ſame time, that there is in Heaven a gradation by intermediate ranks from the Deity to the ſaint, they cannot diſapprove of there being an analogous gradation on earth from the king to the clown.

The French (it is ſaid) have aboliſhed Chriſtianity altogether, which they were enabled to do in conſequence of the inceſſant

ſant attacks made upon it by their beſt writers, from Voltaire to Volney. The laſt has proved himſelf by far its boldeſt and moſt formidable adverſary, (Mr Gibbon himſelf not excepted,) for he inſinuates, that no ſuch perſon as Jeſus Chriſt ever appeared upon earth. All the proof of his having ever exiſted, that can be referred to is (he ſays) a paſſage from the Jewiſh hiſtorian, Joſephus, which is clearly and confeſſedly interpolated; and another from the Heathen hiſtorian, Tacitus, which contains no more than what the Chriſtians ſaid when examined judicially; for, as to the Goſpels, theſe were not written by the perſons whoſe names they bear, but by others long after. He contends alſo, that all the peculiar tenets and doctrines of Chriſtianity were known over the eaſt from the moſt remote antiquity, having been taught by a ſect called Samareans, which the Chriſtians did no more than revive; hence the Chineſe, when the Miſſionaries attempted to convert them, exclaimed, that they were preaching Fa. As this author's book has been tranſlated into Engliſh, and is openly ſold in the ſhops, ſome of our able Divines ought to write an anſwer to him,

and apply themſelves particularly to the topics I have pointed out; as from their novelty and audacity, there is a hazard of their making ſome impreſſion. *The French clergy declined (it is believed) entering the liſts with their enemies, and the conſequence was fatal.*

Paine, when he wrote his Age of Reaſon, ſeems not to have read Volney; for he does not take the leaſt notice of the ideas ſuggeſted by him. That there was nothing new in the Chriſtian religion, had been obſerved, near two hundred years ago, by an Eccleſiaſtic, viz. Charron, in his Treatiſe de la Sageſſe: he ſays, that in the newly-diſcovered countries, (meaning the Eaſt and Weſt Indies) " Preſque toutes les choſes, que nous " eſtimons ici tant et les tenons nous avoir eté " premierement revelées et envoyées du Ciel " etoient en créance et obſervance com- " mune pluſieurs mille ans auparavant qu'en " euſſions ouij les premieres nouvelles *ſoit au* " *faut* de Religion, comme la créance d'un " ſeul premier homme pere de tout, du dé- " luge univerſel, d'un dieu qui veſquit au- " trefois en homme vierge et ſainct, du " jour du jugement, du purgatorie, reſurrec-

" tion

" tion des morts, obſervation des jeunes, ca-
" reſme, cælibat des pretres, ornements
" d'Egliſe, ſurplis, mitre, eau beniſte, adora-
" tion de la croix, circonciſion pareille a la
" Juiſve et Mahumetane." Liv. II. c. 2. p. 299. edit. 1606.

Of Incredulity.

SOME men are too eaſy, others too difficult of belief. I have met with more incidents than one, which confirm me in this opinion. Some years ago, in the courſe of an argument I had with a friend, on the veracity of Herodotus, and the truth of his account of Egypt, his aſſertion, that the men of that country, " *mingunt ſedentes, feminæ ſtantes,*" was produced as an irrefragable proof of his deviation from fact. At the very inſtant, a Gentleman came in, who had been long in India, (the late Sir James Fowlis of Colinton) I ſtated to him the objection that had been ſtarted againſt the Hiſtorian, upon which he ſaid, he did not know how men did in Egypt, but he had ſeen them *do ſo* in India.

Mr Bruce, of Kinnaird, the celebrated traveller, was not believed, when, upon his return home, he related, that the Abyſſinians were

were in the uſe of cutting the fleſh from living animals, and eating it raw. This I believed readily; having read that this was a very ancient practice in the Eaſt, particularly in the countries adjoining Judea.—Hence, many Jewiſh doctors interpret the precept againſt eating blood, (which is ſaid to be the life thereof, *i. e.* the animal) to mean eating it in that manner. See Selden de jure nat. & gent. VII. c. 1.

I mentioned this in Auguſt 1775 to an Engliſh clergyman, at that time in this country, who was ridiculing Mr Bruce; carried him to the Advocates' library, and ſhewed him the paſſage in Selden, which ſurpriſed him very much. Mr Bryant too, in his Mythology, 11, 12, 13, ſhews, that this practice obtained among the Greeks and Romans in the Orgies of Bacchus; and, on other occaſions, it was called Raw-eating. I communicated all this to Mr Bruce ſome months before his Travels were publiſhed, and had a letter of thanks from him; but his book having been printed off by that time, he takes no notice of theſe paſſages. He quotes ſome authors, but Selden is more full

full and ſatisfactory upon it than any other author.

It is frequently ſaid, That Ignorance is the mother of Credulity; it may be added, of Incredulity too.

Herodotus was himſelf ſometimes too incredulous: he relates many particulars from hearſay, adding, that they, to him, were incredible. He was right to relate theſe ſtories, for ſeveral of them have ſince been proved to be true, by what the Phenicians ſaid of their having ſeen the Sun on their left when departing from the Red Sea; they ſailed round Africa, and returned to Egypt by the Pillars of Hercules: this he diſbelieved; but Geſſner, in a Diſſertation ſubjoined to his Orpheus, has evinced its truth. Savary, in his Letters on Egypt, lib 11. p. 29, bears teſtimony to the fidelity of Herodotus;—"c'eſt avec la plus grande ſatisfaction que "je retrouvé dans ce pays les moeurs, les "uſages qu'il a decrit avec quelques legeres "modifications que le changement des do-"minations & des religions y ont intro-"duits."

Of

Of Education.

I THINK it my duty to obſerve, that I am clearly of opinion, that the acquiſition of Greek and Latin coſts children more time and pain than it is worth now a-days; I ſay now a-days, becauſe, as the late Mr Sheridan has juſtly remarked, there is a great difference as to this matter between our days, and thoſe in which Europe emerged from barbariſm, and when letters were revived. Then there was neither language nor taſte among men, and theſe could not be attained but by ſtudying the claſſics; but after a country has got a language, taſte, and claſſics of its own, it ought to lay aſide the troubleſome ladder by which it mounted, there being no longer any uſe for it. Childhood, naturally happy, ought not to be made artificially and needleſsly miſerable; but it is the great misfortune and curſe of mankind, that they will continue practices, not only after the reaſon for introducing them has ceaſed, but after the

the reaſon for a contrary practice has commenced.

I have often, when maintaining this argument, been aſked, How, then, are our children to be employed? to which I have always anſwered, and do now anſwer:—How did the Greeks and the Romans employ theirs? How theirs—the Egyptians, Judeans, and the other powerful and poliſhed nations in different quarters of the globe? The Greeks at no time taught their children any other language than their own; nor the Romans, for ſeven hundred of their beſt years, not till towards the cloſe of the republic, when Greek, which was then a living, not a dead language, came in faſhion with them, as French is with us. A moſt proper and rational plan for the education of the children, both of the rich and poor, that will enable them to diſcharge the duties of the ſtation for which they are intended, may be ſeen in Helvetius, Mercier, and various other writers.

Let me not be underſtood as meaning to detract from the merit of the claſſic authors of

of Greece and Rome. No man has read them with more delight, few have read them oftener than I; but I muſt ſay, "Le jeu ne vaut pas la chandelle." Boys, to acquire a tolerable knowledge of Greek and Latin, muſt ſpend ſeven years of their lives, five at ſchool, and two at the College; and theſe in drudgery and diſtreſs, even when their maſters are not paſſionate and cruel. If they be ſo, which is too often the caſe, they are put into a ſituation which I am unwilling to deſcribe, but which parents would do well to conſider.

Boys, however, who are deſigned for what are called the learned profeſſions, muſt ſubmit to this miſery, as long as a knowledge of theſe languages is deemed neceſſary for theſe profeſſions; but that ought not to be, and I hope and believe that will not be very much longer the caſe.

Some think it is for the advantage of boys to ſee, in miniature, at ſchool, what they muſt afterwards meet with upon a great ſcale in the world at large. According to that idea, the ſchool I attended was a model. There we ſaw every day the progreſs of merit ob-

ſtructed by partiality; there we ſaw it every year obliged to give place to wealth. The *aurati*, that is thoſe who, at Candlemas, gave gold, not leſs than half a guinea, (of whom I was one) had the play an hour or two for ſome days; and, upon this occaſion too, the claſſes were aſſembled in the common hall, and the order was given *bis*, *ter floreat* ſuch a boy, according to the number of pieces he had preſented. Upon *floreat* being pronounced, all the boys ſhouted, and beat the floor with their feet.

Here I cannot help mentioning a ſingular incident enough, that happened on one of theſe occaſions, when I was at the Rector's claſs:—Two boys gave three guineas each. Both were entitled, but only one could be Dux. The Rector, with an embarraſſment of face which I ſhall never forget, ſignified that he was altogether at a loſs how to proceed, and that they muſt do ſomething to extricate him from the puzzle: upon this, one of the boys took a halfpenny out of his pocket, got up, and ſtretched out his arm towards the Rector, and called out, "There!" The Rector, ſuppoſing it to be a guinea more,

more, advanced with great complacency of countenance, but, on ſeeing the coin, fell into a moſt enormous rage; yet the laugh was ſo loud, and ſo long, and ſo juſt againſt him, that he was forced at laſt to join it himſelf, and ſettle the matter without any further pecuniary interpoſition in ſome way or other which I do not recollect.

What I have ſaid above, as to Greek and Latin, applies alſo to the civil law. When the Pandects were found at Amalphi, in Italy, about ſeven hundred years ago, it was a great diſcovery for Europe, becauſe it was then in a ſtate of barbariſm; and the general principles of equity are explained by the Roman lawyers with great acuteneſs and elegance; but at leaſt three-fourths of the Roman ſyſtem is inapplicable to modern nations; and therefore it ought either not to be taught at all, or thoſe titles of it only which are general and uſeful: but my head, and the heads of my fellow-ſtudents, were ſtuffed with the Roman titles of Slavery, Adoption, and a hundred others, which I know, from more than thirty years experience, are of no more

uſe to a Scotch lawyer, than the Alcoran of Mahomet. The application we gave was vigorous; what a pity it was ſo miſdirected! What ought to be taught previous to the ſtudy of the Scotch law, is, univerſal juſtice and morality, "le droit des Gens;" and while at the Scotch law, the ſtudent ought to attend a writing chamber for ſome time, to acquire ſome knowledge of ſtiles and forms, as alſo of the antiquities of his country. But the old method is ſtill followed, though references to, or quotations from, the civil law, are now ſeldom made, and the few who ſtill continue to quote texts and doctors, are laughed at.

NB. That Lord Dreghorn has been advanced with the regard to the Greek and Latin Claſſics is in direct contradiction to the ſentiments of the Great Earl of Chatham, whose conſtant injunction to his ſons Tutors was to cram them when young with Greek and Latin. Vid Life of Lord Chatham

Of

Of Happineſs.

It has been much diſputed, whether the ſavage or the ſocial ſtate be happieſt. It ſeems to me to be a very problematical queſtion. It is much againſt the latter, if what ſome have alledged be true, that, though many have returned from the civilized to the ſavage ſtate, none ever did from the ſavage to the civilized. Dr Johnſon, who preferred the former, was in uſe to ſay, by way of argument, "That the Savage was always either "ſleeping in his den, or chaſing his prey."— If ſo, his ſituation, when attended to, will afford a very ſtrong argument for giving the preference to the ſavage ſtate; for, according to the Doctor, the Savage has his time divided into two portions; during one of which he is happy, (for the chace is moſt agreeable labour) and, during the other, not miſerable; but, in civilized ſociety, numbers have no prey to chace, and cannot ſleep even in the night time.

A man

A man muſt be more or leſs happy, according as the exertion of his faculties, mental and corporeal, is more or leſs completely vigorous.

Conſequently that muſt be the beſt mode of government which affords the greateſt ſcope for that exertion.

It has been ſaid, that men, under the ancient democracies, had feelings and ſenſations of which we have no notion. I believe they had, but we are well rid of many of them, viz. thoſe ariſing from domeſtic ſlavery. In Rome, there was a whip hanging on the ſtair-caſe of every houſe.

Proſperity alone cannot make either an individual or a nation happy.

LETTRE.

Au Rédacteur du Courier de l'Europe.

Edinbourg, 23 Décembre, 1783.

MONSIEUR,

La hardieſſe philoſophique de M. le Marquis d'Arlandes doit être applaudie de tous les amateurs ; and je me flatte que ce voyageur intrépide ne me ſaura pas mauvais gré de lui avoir indiqué les vers dont il peut à juſte titre ſe ſervir déſormais pour deviſe :

——— Veni nec puppe per undas
Nec pede per terras ; patuit mihi pervius aer*.

Le nom de Franklin, qui ſe trouve parmi pluſieurs autres noms illuſtres au bas du procès-verbal de l'expérience de M. le Marquis, me rappelle une obſervation que j'ai faite il y a quelque temps, & que je crois pouvoir faire à preſent aſſez à propos. Il me ſemble que l'art d'attirer le feu électrique des nues, pendant,

* Ovid. Metam. v. c. 54.

pendant qu'il tonne, étoit connu par des Savans d'une antiquité très-reculée. Je me fonde ſur un conte d'Ovide & ſur un fait rapporté par Tite-Live. Ovide nous apprend* que Numa, ſecond Roi de Rome, effrayé par le tonnerre qui avoit duré pluſieurs jours, conſulta la Nymphe Egérie, & qu'elle lui répondit :

——— Piabile fulmen
Eſt, ait, & ſævi flectitur ira Jovis.
Sed poterunt *ritum* Picus Faunuſque piandi
Prodere ; Romani numen uterque ſoli,
Nec ſine vi tradent : adhibeto vincula cæptis.

Numa fit tout ce que la Nymphe lui avoit conſeillé.

Quoque modo poſſit fulmen, monſtrate, piari.
Sic Numa, ſic quatiens cornua Faunus ait
Arbitrium eſt in ſua tela Jovi,
Hunc tu non poteris per te *deducere cælo.*
At poteris noſtra forſitan uſus ope.
Emiſſi quid agant laqueis, quæ carmina dicant,
Quaque *trahant ſuperis ſedibus* arte Jovem
Scire nefas homini : nobis conceſſa canantur,
Quæque pio dici vatis ab ore licet :

Eliciunt

* Faſt III. 285, & ſeq.

Eliciunt cœlo te, Jupiter, unde minores
Nunc quoque te celebrant, *Eliciumque* vocant.

Tout cela eſt expliqué merveilleuſement parle paſſage ſuivant de Tite-Live.

" Ipſum Regem (ſcilicet Tullum Hoſti-
" lium,) tradunt, volventem *Commentarios*
" *Numæ*, quum ibi quædam occulta ſolem-
" nia ſacrificia *Jovi Elicio* facta inveniſſet,
" operatum his ſacris ſe abdidiſſe : ſed *non*
" *rite initum aut curatum id ſacrum eſſe ;* nec
" ſolum nullam ei oblatam cœleſtium ſpe-
" ciem, ſed ira Jovis, ſollicitati prava reli-
" gione, *fulmine ictum* cum domo confla-
" graſſe."

Voici un Roi tué par un coup électrique (comme l'a été un Profeſſeur Ruſſe il y a quelques années) faute de n'avoir pas pris les précautions néceſſaires en faiſant une expérience périlleuſe.

Il y a auſſi un paſſage d'Athenée, d'où on peut conclure que l'électricité n'etoit pas inconnue aux perſonnes de ſon temps verſées dans la *magie naturelle*. Il dit d'un certain Xenophon : " Emicantem ſponte ignem hic

eliciebat & *aliis id genus multis ſpectris quæ ingenioſe machinabatur, hominum obſtupentium judicia perſtringebas & ludificabatur.*"

J'ai l'honneur d'être, &c.

Of the Balloon.

I FIND, from a French tranſlation of Carli's Letters, publiſhed at Boſton in 1789, that he has made the ſame remark as to electricity. He quotes the paſſage of Livy above recited; but not that of Ovid, of which, therefore, I ſuppoſe he did not know. He refers alſo to the Meteorologie of Carli, which proves, that, for time immemorial, a Parratonerre had been kept in a baſtion, in the caſtle of Dueno, in the Adriatic. The centinel, on guard, preſents a halberd to it, when there is the appearance of a ſtorm, and if it emit ſparks, he rings a bell to give warning.

There is a book in the Advocates' Library, printed at Nuremberg, in 1676, and entituled, "Collegium experimentale ſive curioſum," by T. Chriſt. Sturmus; which gives an account of Lana's Balloon, mentioned in the

the Naples Gazette, quoted by the Courier. I took from it the following excerpt, it is entituled, "*Inventum P. Franciſci Lanæ ſingulare hoc eſt, Naviculæ per aerem, remis, veliſque agendæ poſſibilitatem, planiore ac ſimpliciore modo commonſtrans**. The method is by ſpheres, globes, or balloons, of copper, and a certain diameter, from which the air has been exhauſted: p. 63, he ſays, "*Orbem cupreum, ex ejus generis laminis, quales ſupra num. VIII. deſcripſimus, paratum, qui* 16 *pedum diametrum haberet, & artificio quodam evacuatus eſſet, non ſolum natuturum libere in aere & ſublimia petiturum, ſed & preterea pondus extrinſecus appenſum plus quam* 60 *librarum una ſublevaturum*. And, by increaſing the bulk, it will carry one, two, or three men, &c.; at p. 64, he gives the figure.

Mirabeau had great expectations from the balloon, as appears from his ſeventh letter to Mauvillon, where, after deſiring him to conſider of its application to war, he adds, "Quand

* Vide Tentamen X. p. 56.

" Quand a l'etendue philoſophique de cette " decouverte, c'eſt une mer ſans bords, ou " l'eſprit humain fera pendant pluſieurs " ſiecles les decouvertes les plus deciſives & " les plus influentes. Je l'ai toujours penſé & " je ne m'en dedis pas."

Mercier is of the ſame opinion; he expects, that in time, and indeed in twenty-five years, a method will be fallen upon for giving it a horizontal direction, and making it move in the air as a fiſh does in water.

M. le Baron Scot has imagined a balloon upon this idea; it perfectly reſembles a fiſh: he publiſhed a deſcription of it in a ſmall Treatiſe at Paris 1789.

In company with the late Adam Smith, I ſaw, on the Caſtle-Hill, Lunardi aſcend from Heriot's Gardens *. It was a ſight the moſt magnificent, and the moſt honourable to human nature, I ever beheld. The Courier de l'Europe, after inſerting my letter, adds

* In 1784.

adds an article from Paris, which bears, that, at an aſſembly, where a lady of diſtinction preſided, ſhe paid the following compliment to Montgolfier and Roſier, who happened to be preſent: "Je voudrois que les hommes " de genie qui font des decouvertes utiles " ou glorieuſes a leur patrie, fuſſent divinisés, " les machines areoſtatiques de M. Montgol- " fier m'ont fait croire que mes ſouhaits al- " loient s'accomplir; a voir la hardieſſe avec " la quelle les navigateurs aeriens s'elevoi- " ent dans les cieux, ils me ſembloient re- " tourner vers leur pays natal." This compliment is juſt, and well expreſſed.

Of the Alteration of the Seaſons.

It is long ſince many, of whom I am one, have maintained, that the Seaſons are altered; that it is not ſo hot now in ſummer as when we were boys. Others laugh at this, and ſay, that the ſuppoſed alteration proceeds from an alteration in ourſelves; from our having become older, and conſequently colder.

In 1783, or 1784, in the courſe of a converſation I had with my brewer, who is very intelligent and eminent in his way, he maintained that an alteration had taken place. This obſervation he made from a variety of circumſtances; the diminution of the number of ſwallows, the coldneſs that attends rain, the alteration in the hours of labour at the time of ſowing barley, which a great many years ago was a work performed very early in the morning, on account of the intenſeneſs of the heat after the ſun had been up for ſome time. He added, that, for many years paſt, he had found

found that the barley did not malt as formerly, and the period he fixed on was the year in which the earthquake at Liſbon happened.

I was much ſurpriſed at this laſt obſervation, and did not pay much attention to it till laſt ſummer, when I happened to read "Les Annales Politiques," of Linguet, a very ſcarce book, which I was ſure my brewer had never read; for there, to my aſtoniſhment, I found the very ſame opinion, with this additional fact, that, in Champagne, (where he was born) they have not been able, ſince that earthquake, to make the ſame wine. He ſays too, that he has ſeen the title-deeds of ſeveral eſtates in Picardy, which proved, that, at that time, they had a number of excellent vineyards, but that now no ſuch crop can be reared there. He alſo attempts to account philoſophically for that earthquake having ſuch effects. See Annal. Politiq.

OF THE

PERFECTIBILITY

OF

MAN.

And yet the wholſome herb neglected dies,
Tho' with the pure exhilarating ſoul
Of nutriment and health, and vital powers,
Beyond the ſearch of art, 'tis copious bleſs'd.
For, with hot ravine fir'd, inſanguin'd man
Is now become the lion of the plain,
And worſe. The wolf, who, from the nightly fold,
Fierce drags the bleating prey, ne'er drunk her milk,
Nor wore her warming fleece: Nor has the ſteer,
At whoſe ſtrong cheſt the deadly tyger hangs,
E'er plow'd for him. They too are temper'd high,
With hunger ſtung and wild neceſſity,
Nor lodges pity in their ſhaggy breaſt.
But *Man*, whom Nature form'd of milder clay,
With every kind emotion in his heart,
And taught alone to weep; while from her lap
She pours ten thouſand delicacies, herbs,
And fruits, as numerous as the drops of rain,
Or beams that gave them birth: Shall he, fair form!
Who wears ſweet ſmiles, and looks erect on heaven,
E'er ſtoop to mingle with the prowling herd,
And dip his tongue in gore? The beaſt of prey,
Blood-ſtain'd, deſerves to bleed: But you, ye flocks,
What have ye done? ye peaceful people, what,
To merit death? you, who have given us milk
In luſcious ſtreams, and lent us your own coat
Againſt the winter's cold? and the plain ox,
That harmleſs, honeſt, guileleſs animal,
In what has he offended? he, whoſe toil,
Patient and ever ready, clothes the land
With all the pomp of harveſt; ſhall he bleed,
And, ſtruggling, groan beneath the cruel hands
Even of the clown he feeds? and that, perhaps,
To ſwell the riot of th' autumnal feaſt,
Won by his labour? Thus the feeling heart
Would tenderly ſuggeſt: but 'tis enough,
In this late age, adventurous, to have touch'd
Light on the numbers of the *Samian* ſage,
High HEAVEN forbids the bold preſumptuous ſtrain,
Whoſe wiſeſt will has fix'd us in a ſtate
That muſt not yet to pure perfection riſe. *Thomſon.*

Of the Perfectibility of Man.

Intrandum eſt in rerum naturam et penitus quid ea poſtulet pervidendum.
Cic. de finibus. V. 16.

TURGOT, and after him Helvetius, Roſſeau, Mercier, and ſeveral other writers, both French and Engliſh, have aſſerted, that there is a poſſibility of mankind arriving in time at a ſtate of perfection; and they have given many pleaſing repreſentations of his progreſſive attainments in art, ſcience, and felicity. The lateſt of theſe philoſophers, Mr Godwin, in a book entituled, "An Inquiry concerning Political Juſtice, and its influence on Morals and Happineſs," has far ſurpaſſed his predeceſſors in his ſpeculations on this ſubject; for he maintains, that, in time, ſuch will be the influence of truth and juſtice, that man will entirely ſubdue his paſſions, and conſtantly act in conformity to reaſon. So that, according to his ſyſ-

tem, he maintains, there would be then no occaſion for government, law, puniſhment, or labour; that, in time, mind will become (as Franklin, he ſays, predicted) omnipotent over matter; nay, what is a ſtill more extraordinary notion, that man will, in time, diſcover the means of rendering himſelf immortal.

It is not propoſed, in this paper, to examine, whether the expectations of this author be reaſonable or romantic; but to ſhow that, ſuppoſing them all to be in the courſe of time realized, that the ſyſtem of human nature muſt, nevertheleſs, remain miſerably imperfect, unleſs ſome very great radical change be made in the nature of man, which none of the advocates for perfectibility are willing to admit, not even Mr Godwin himſelf.

That author is bold enough to aſſert, that half an hour a-day, ſeriouſly employed in manual labour, by every member of the community, would ſufficiently ſupply the whole with the neceſſaries of life; and that the reſt of the day might ſuffice in a ſimple ſtate

ſtate of ſociety, "for the fabrication of tools "for weaving, and the occupation of tailors, "bakers, and *butchers*." It is, however, conceived, that his allowing the laſt-mentioned trade to exiſt, that is, his toleration of conſuming the animal food, taints, and indeed poiſons his whole ſyſtem.

The French author ſo often referred to in this work *, furniſhes me with an excellent introduction to this queſtion, as to the poſſibility of man's ever attaining a ſtate of abſolute perfection.

"Obſerve (ſays his inſtructor) that the "blood of animals does not flow, and excite "the idea of carnage in the ſtreets: the air "is preſerved from that cadaverous ſmell, "which engendered ſo many diſeaſes: clean-"lineſs is the ſign the moſt unequivocal of "order, and public harmony it reigns every "where. With a precaution ſalutary, and, "I will be bold to ſay, *moral*, we have pla-"ced the ſhambles without the city."

Now,

* See Mercier's L'An Deux Mille Quatre cent Quaranti.

Now, it may be aſked, Why is this precaution *moral?* as this author expreſſes it; for his words are, "Par une precaution et joſe- "rois dire morale:" the queſtion is very material, and the idea of precaution being conſidered by ſuch an author as moral, tends much to prove the difficulty, if not impoſſibility, of human nature ever becoming perfect.

It is thought, that it will appear ſtill more obvious to every impartial reader, that perfection is too inconſiſtent with the nature of man in his preſent ſtate, for the ſpecies ever to attain perfection, if the following queſtion, ſuggeſted by a particular friend of mine ſome years ago, be deliberately conſidered;—he aſked me, How it happens, that, if it be not wrong for a man to kill an ox, that he may eat his fleſh and tan his ſkin, why ſhould it be wrong for a man, if he can do it with ſecrecy and impunity, to kill his neighbour, that he may poſſeſs himſelf of his money and cloaths, of which perhaps he ſtands very much in need? I put not this queſtion, he ſaid, to prieſts or philoſophers; but to you, whom I know to be a man of a plain and

and unwarped underſtanding, deſirous of diſcovering Truth, and willing to preſent to her a *carte blanche*, let her write upon it what ſhe may. This queſtion, I confeſs, I could not anſwer at the time, and, indeed, I cannot yet, after thirty years meditation; nor do I believe that any anſwer can be given, although it may afford argument for a long diſſertation, in which there will be, probably, much more ingenuity than candour.

This *moral* queſtion, the ſight of the ſhambles, would, no doubt, frequently ſtir in the breaſts of all humane thinking people; and it is plainly with the view of quaſhing any ſuch inquiry, that Mercier wiſhes them to be placed out of view.

For the ſake of argument, as well as for the entertainment of the reader, it may not be improper to relate two incidents that happened to the very ſame friend*, more than thirty

* The Editor has every reaſon to believe, that the friend alluded to in this and the above paſſage, is the author himſelf;

thirty years ago. At his houſe, in the country, he had a number of ewes and lambs; the latter of which were killed from time to time, for the uſe of his family. One ſummer morning, when he went out to walk, he was ſhocked at the plaintive and deſpairing cry of an ewe, whoſe lamb had been killed ſome hours before; but what was his agitation, when ſhe boldly came up to him, ſtared him in the face, and pawed the ground! he immediately turned from her, conſcious of her wrongs, and tortured with the horrors and pangs of remorſe, (for the aſſurance of impunity can only ſubdue fear, not conſcience,) and he has often declared, that the appearance of this harmleſs animal, that day, would never be effaced from his memory ſo long as he ſhould retain his faculties.

Not long after this, he met a number of farmers in his neighbourhood, one morning running up a hill, above his houſe, with won-

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ſelf; although, probably, from motives of delicacy and diffidence upon ſo very ſpeculative and metaphyſical a ſubject, he wiſhed to impute the thought to another.

wonderful eagerneſs: upon his inquiring what the matter was, they told him, that they were in purſuit of a fox, who had taken ſeveral lambs from each of their flocks; upon which they got out into a great rage againſt the cunning beaſt, calling him Villain, robber, and ſly raſcal! but they comforted themſelves with the thought, that they would ſoon be able to put him to death. Upon which my friend looked archly at them, and ſaid, Pray, good people, what would *you* have done with the lambs, if *he* had not taken them away? They, no doubt, feeling the force of the queſtion, returned him a look, and ran on without making any anſwer; and their ſilence was certainly judicious. The argument of the Wolf, in the Fable, is very applicable to this ſubject:

——— Il vit des Bergers, pour leur rôt,
Mangeans un Agneau cuit en broche.
Oh! oh! dit-il, je me reproche
Le ſang de cette gent: Voilà ſes gardiens
S'en repaiſſans eux & leurs Chiens,
Et moi Loup, j'en ferai ſcrupule?
Non, par tous les Dieux: non, je ſerois ridicule.
Thibaut l'Agnelet paſſera,
Sans qu'à la broche je le mette?
Et non-ſeulement lui, mais la mere qu'il tette,
Et le pere qui l'engendra.

Le Loup avoit raiſon. Eſt-il dit qu'on nous voie
Faire feſtin de toute proie,
Manger les animaux ; & nous les réduirons
Aux mets de l'âge d'or * autant que nous pourrons ?
Ils n'auront ni croc, ni marmitte ?
Bergers, Bergers, le Loup n'a tort
Que quand il n'eſt pas le plus fort :
Voulez-vous qu'il vive en hermie ?

FONTAINE, X. 6.

I have heard this my friend frequently maintain, that our ſlaughter of the harmleſs brutes ſaps the very foundation of morality. If, he ſaid, their diſſimilarity and inferiority in point of organization and intellect, juſtify man in his maltreatment of them; it follows, upon the ſame principle, that a man, ſuperior in figure and underſtanding, may juſtly conſider men inferior to him in theſe qualifications, in the ſame light in which we view the brutes, and make them ſubſervient to his paſſions and pleaſures without remorſe.

Cæſar, and other conquerors, who have been each of them the means of deſtroying my-

* Des premiers temps, ou les hommes vivoient de glan & de légumes.

myriads of men, probably reaſoned in that manner.

Pythagoras, he added, ſaw this, and therefore taught his diſciples, "That, if they "meant to conform themſelves exactly to "the dictates of juſtice, they muſt not com-"mit any injury even to their fellow-crea-"tures; for how could they perſuade men "to act juſtly to one another, if they them-"ſelves were found aggrieving their fellow-"animals, compoſed of the ſame elements, "and participating of life like them." See the Life of Pythagoras, by Jamblichus, cap. 24.

Mercier, in a work ſubſequent to that formerly quoted, foreſeeing this objection, has employed ſeveral pages in an attempt to obviate it*.

He begins with ſaying, that there is no *relation* between mankind and the brutes; and

* See his Notions Claires ſur les Gouvernements, vol. I. p. 232; and vol. II. p. 36.

yet he concludes with declaring, that we do and ought to pity their ſufferings.

This is inconſiſtent; for if there be no relation between us and the brutes, how comes pity for their ſufferings to ariſe in our breaſt? The very emotion indeed proves the relation.

There are none between us and plants; and as they do not feel pain, at leaſt perceptibly to us, we therefore do not feel pity at their deſtruction.

Mercier alſo adds, that there cannot be any *obligation* between us and the brutes. If, by obligation, he means contract, the poſition is certainly true; but the argument founded on it will, nevertheleſs, prove too much. It tends to prove, that a man may kill and eat a negro ſold to him in Africa, or an infant child, which he finds expoſed any where. It ſuppoſes, that there are no obligations but what are conventional; no foundation of juſtice, but utility, which is inconſiſtent with his own admiſſion; that we ought not to diſpenſe with pity to the brutes; and

and that we ought to relieve their ſufferings. Now, why ſhould we do ſo, if there be no relation or obligation between us?

As to the argument from neceſſity, on which this author inſiſts very much, there is no doubt that neceſſity will juſtify men, not only for eating other animals, but even one another. It would be, however, as unneceſſary as it would be abſurd, to combat that argument; for, if it be held to be neceſſary that men muſt devour other animals, and, at the ſame time, if it be unjuſt that they ſhould do ſo, as has already been ſhown, then it follows, that mankind cannot attain perfection in this world.

Rouſſeau, who, in his Preface to his celebrated Eſſay on the inequality among men, derives the law of nature from love of ſelf, and pity to others, is much more conſiſtent on this ſubject than Mercier: his words are, "As long as man ſhall not reſiſt the immediate impulſe of compaſſion, he will never "do harm to another man, nor even to any "being that hath feeling, except in caſe his "own preſervation be at ſtake; then he may "do

"do it legitimately, being forced by the im-
"pulſe of nature to give the preference to
"himſelf." This affords a ſolution of the ancient diſpute, as to whether animals participated of the law of nature: for it is clear, that, if deprived of knowledge and liberty, they cannot recogniſe any ſuch law; but being of a nature analogous to our own, in conſequence of the ſenſibility with which they are endowed, we muſt determine that they ought to participate of natural law, and that man is bound to perform ſome ſort of duties to them. It ſeems indeed clear, that, if I be not obliged to do any harm to a human creature, it is leſs becauſe he is a rational, than becauſe he is a feeling, being; which qualification being common to beaſt and man, ought at leaſt to give the former the right of not being maltreated needleſsly by the latter.

The Gentoos, in ſparing tygers, lions, and other beaſts of prey, act abſurdly and inconſiſtently: for, if their object be the preſervation of animal life, they ought undoubtedly to deſtroy all its enemies. They likewiſe act abſurdly in ſweeping the ſtreets before

fore they walk out, for fear of cruſhing inſects. This abſurd practice of theirs is founded on an error in phyſics. They ſuppoſe that all animals are viſible. A Gentleman, who had been long an officer in India, told me, that once, in arguing upon this point with a Bramin, and in order to prove that it was impoſſible for him to avoid deſtroying myriads of animals, do what he might, he took a microſcope, and ſhewed him a number of animalcula in a glaſs of water; the Bramin, confounded at this, turned away his head, ſaying, It was a deception.

Mr Godwin ſays, "That virtue enjoins "us to do our utmoſt to promote the hap- "pineſs of all *intelligent* beings" Now, it ſurely may be aſked, why he limits the obligation to intelligent creatures? why does he not extend it to all animated harmleſs beings? Do not we feel ſatisfaction and pleaſure when we allow a butterfly that has got into the room, to eſcape? A Gentoo, who hurts no animal, but exerts himſelf to the utmoſt to give all of them protection and happineſs, is certainly more praiſe-worthy than Mr Godwin; who, with all his ſyſtem of perfection, whilſt

whilſt he allows butchers and ſhambles to be neceſſary to ſociety, can, comparatively ſpeaking, be viewed in no other light than as a reaſoning animal of prey. I am, however, rather inclined to ſuſpect, from the genuine principles of his theory, that what he has ſaid about butchers, has crept into his book from inattention; and that he will, perhaps, blot it out on reflection, and afterwards ſupport the doctrine ſuggeſted by ſome French authors, of the poſſibility in time of diſcovering an univerſal vegetable food for man.

There is but one method of enabling men to avoid animal food, and that is to confine them to their natural climate, a warm one, which they do not quit but upon compulſion, *non niſi coacti*, as Linnæus expreſſes it. There they find abundance of fruits and vegetables, their natural food; for they are carnivorous, not by nature, but by neceſſity. This confinement, however, could not long afford them that happy diſpenſation, and preſerve to them the degree of perfection they might attain when in their natural and beſt ſtate; for they muſt ſoon be under

der the neceſſity of reſorting to the practice tolerated by the nations, and even philoſophers of antiquity, and ſtill allowed in China, of checking population, otherwiſe they would multiply ſo faſt as to render the conſumption much greater than the produce of food; the conſequence of which would be, emigration to unfruitful countries, and that of itſelf neceſſarily introduces animal food.

The ſpeculation as to the killing of animals naturally leads me to the conſideration of the Slave Trade.

I have never yet been able to perceive how thoſe, who do not condemn our ſlaughter of the brutes, can, with conſiſtency, declaim vehemently againſt, and inſiſt for, an abolition of Negro Slavery.

I hear the cries of a negro agonizing under the ſevere whip of a Planter: I run up, buy him, give him his liberty, and ſome money: then he, himſelf, goes to a cattle market, purchaſes ſome ſheep, tears a lamb from its mother, and kills it before her eyes for his dinner: I aſk, What title has that

black man to complain of his former miſery and ſlavery? for what right had he to kill the lamb? he may anſwer, *Le droit de plus fort.* I reply, his maſter had the very ſame right to ſcourge him to death.

If the ſole foundation of juſtice be utility, and a great utility juſtify the ſlaughter of the brutes, the leſſer utility of ſugar and tobacco will juſtify, on the ſame principle, the leſſer evil of negro ſlavery; and, in that view, the queſtion of abolition comes to be a mere queſtion of fact: Is negro ſlavery abſolutely neceſſary for that culture, or not? If it ſhall be ſaid, that ſugar and tobacco are not ſo neceſſary to man as animal food, I anſwer, that an abſolute neceſſity is out of the queſtion; for that animal food is not abſolutely requiſite to his exiſtence, is proved by the practice of the Gentoos in India, and of the very poor almoſt every where. The neceſſity alledged does, in reality, reſolve into no more than a very great utility, excepting in ſome very unhoſpitable regions, where ſavages can alone ſubſiſt by means of the arrow or harpoon; and where they would be excuſable upon the ſame

ſame principle of neceſſity for eating one another, were game and fiſh not to be found.

It may indeed be maintained, that there is a political neceſſity for it; becauſe, were we to abandon our very conſiderable ſhare of the productions of the Indies, and aboliſh ſlavery, our poſſeſſions there would ſoon be occupied by ſome other nation; ſo that the whole effect of doing ſo, would be to diminiſh the trade of Great Britain, and not to better the ſtate of the Negroes of Africa.

It has alſo been maintained by the Advocates for this Slavery, that, though all European nations were to renounce the Slave Trade, no advantages would accrue to the Negroes themſelves from the adoption of ſuch a meaſure; becauſe, if not removed as ſlaves to the Weſt Indies, they would, nevertheleſs, be ſubjected to ſlavery, in conſequence of the deſpotic, warlike, and cruel diſpoſition of their kings at home.

This is, no doubt, as good an apology for Negro Slavery as that for animal food; which

is founded on the ſuppoſition, that, if brutes were not deſtroyed by men, they would be ſo by one another. An argument that goes to prove, that, if I were certain, or even had reaſon to believe, that a rich man of my acquaintance was to be murdered or robbed by another, I ought to anticipate the event by committing the murder or robbery myſelf.

From what has been ſtated, let it not be underſtood that I am by any means an advocate for the Slave Trade. I only have made theſe obſervations, in order to prove an argument of inconſiſtency, or *ad hominem*, againſt its ſupporters. On the contrary, I have been in reality, ſucceſsfully, gratuitouſly, and zealouſly, an advocate againſt it; I wiſh and hope for a ſpeedy abolition of that traffic; nay, I even wiſh for ſome relief, if poſſible, to the brutes. There is indeed ſome reaſon to expect, even the laſt, as ſome authors have generouſly pleaded their cauſe; and, much to the honour of the age we live in, ſome regulations have been made, and even ſome judgments pronounced for protecting them

them from needleſs oppreſſion and barbarity.

The police of ſome towns has very properly interpoſed to prevent the raſhneſs of carriage-drivers; and I diſcovered from the newſpapers, ſome time ago, that Lord Moleſworth had brought to juſtice a drover, for uſing cruelly the poor animal under his charge; and that paper adds, "This is noticed as a proper example to all gentlemen who may witneſs ſuch outrages: the proceeding is by taking the offenders before any of the juſtices of the peace *."

In the ſame paper for December, there is an account of a trial brought for this humane purpoſe; the proſecution is highly praiſe-worthy, although the verdict of the jury may not perhaps deſerve commendation.

In ſhort, it follows, I apprehend, from what has been ſtated, that thoſe who contend

* See the Star for Auguſt 1793.

tend for the perfectibility of man, muſt, to be conſiſtent, admit the injuſtice of human ſlavery and animal food. The laſt cannot be vindicated on any principle that does not ſupport the former; and while the two are received into the ſyſtem of civil ſociety, it cannot poſſibly ever become perfect, but muſt remain in a ſtate that merits a very, very different appellation.

Of

Of Language.

An univerſal language is not impoſſible. This has been often thought of. I read, ſome years ago, an eſſay upon it in the Memorials of the Academy of Berlin. The concurrence of learned and intelligent men in Europe might ſoon bring it into uſe and faſhion; and it is not improbable that this will happen ſooner or later. Rouſſeau thought ſo.

Pitſcottie, in his hiſtory of Scotland, ſays, that James IV. placed a dumb woman, with two infants, in the iſland of Inchkeith, for the purpoſe of diſcovering what language they would ſpeak; and it was reported that they ſpoke Hebrew. The ſame experiment, according to Herodotus, was made by an Egyptian king, and with much the ſame ſucceſs; it being reported that the children ſpoke Phenician.

I am ſurpriſed that in this philoſophic age, in which the origin of language has been

been ſo much canvaſſed, that the experiment has not been properly made, it would not require much expence: till this be done, thoſe who ſpeculate on the ſubject ought to attend more than they have yet done to children and nurſes. I had not read or thought much on the ſubject, when I had an opportunity of making ſuch obſervations; but it appeared to me, that a child forms a vocabulary of its own, as ſoon as it can articulate. Nature prompts this. A child can not acquire the language it hears ſpoken without much trouble and time; but having need of many things which geſture cannot point out, it muſt uſe a number of different ſounds, and of eaſy pronunciation. I remember very well to have remarked ſeveral inſtances of this.

I once heard an obſervation which ſtruck me, that one effect of the French revolution would be, to put an end to the diſtinction between the court and country language. There was no ſuch diſtinction, it was ſaid, known to the Greeks and Romans. As far as I remember, in none of their dramatic, or other authors, is any perſon introduced

ced ſpeaking a *Patois*, or provincial dialect, or uſing what we call low phraſes; at the ſame time, as the difference between maſter and ſlave was greater than that between gentleman and clown now, it muſt have been very ſtrange if they had not a citizen and ſlave language. That different places had different expreſſions, appears from Aſinius Pollio's ſaying of Livy's ſtyle, that he perceived Patavinities in it*.

Mercier, in his *Tableau de Paris*, ſays, that the French Academy unhappily fixed the French language while in its infancy. If the language of a country ought at all to be fixed, it ſhould ſeem, that it ought not to be done till it has arrived at a very high pitch of civilization, commerce, and knowledge; otherwiſe it will become neceſſary to uſe a number of circumlocutions, or foreign terms. It is unreaſonable to find fault with a writer for uſing a word, becauſe it has never been uſed before; for, though it perhaps has not

* Livy was born at Patavinum.

yet been Engliſh or French, if it ought to be introduced into either language, both writers and ſpeakers ſhould uſe it. Dubiety is not in Johnſon's Dictionary; and I heard, many years ago, that ſurpriſe had been expreſſed in the Houſe of Lords, on a Scotch Counſel's uſing it. Dubioſity is in his Dictionary, and yet the firſt ſeems to me the better word of the two. If, as ſome aſſert, there be no bounds to the perfectibility * of the human race, then no language ought to be fixed at any time, and indeed cannot be ſo.

It is commonly ſuppoſed, that coincidence in language proves a common ſtock; but it appears to me, that the propoſition cannot be ſupported, if expreſſed in ſuch general terms; for, it is only coincidence in ſtructure and idiom that amounts to ſuch proof, not coincidence in vocabulary. The French and Engliſh language coincide often in vocabulary: this proves that the two nations

* This is not an Engliſh word, and yet the idea cannot otherwiſe be expreſſed without a circumlocution.

+ He kick'd old English fairly out
And took Dubiously for doubt
Dalrymple's Rodondo

tions have had much communication with one another; but it does not prove them to have had the ſame origin, becauſe the idiom is quite different. However, it muſt be acknowledged, that every attempt to trace the origin of language is bewildering; and Rouſſeau himſelf acknowledges that it is above his comprehenſion.

Of Dr Johnſon's Style.

Dr Johnſon never uſes in his Poems the ſtiff pedantic ſtile, the *ſeſquipedalia verba*, that he makes uſe of in the Rambler, and his other proſe works. His proſaic ſtile ſeems to have been formed on that of "Brown's Vulgar Errors:" it gives to a number of Greek and Latin words an Engliſh termination, and thus attempts to naturaliſe them, but in vain; the caprice of uſage has rejected them, except in works of natural hiſtory and philoſophy: I ſay caprice, for it ſeems impoſſible to aſſign any good reaſon for rejecting many of his words, and yet adopting others which are equally exotic. If it could be ſaid with truth, that we had rejected theſe foreign words only, for which we had equivalents in our own language already, it would then be obvious that we proceeded on ſome principle, but the fact is not ſo. Omnipotent, Diſlocate, &c. words which are in the mouths of every body, are foreign words naturaliſed, for which

we

we have already equivalents. Ablactate, with propriety, might not be adopted, becauſe Wean is equally expreſſive and ſhorter; and, for the ſame reaſon Appropinquate, as we have already Approach: but why do we uſe Omnipotent and Diſlocate, when we have Allpowerful and Diſplace? It would be difficult to aſſign any reaſon for this, that ought not to induce us to adopt every word which is pretty and expreſſive.

Of Plagiariſm.

COINCIDENCE in thought does, by no means, prove plagiariſm to a certainty, but if accompanied with coincidence of expreſſion, it does. The famous paſſage in Triſtram Shandy, viz. "the inſtruments with which "we kill a man, we gild them, we carve them, "we inlay them; but the inſtrument by "which we," &c. is copied, for it is a tranſlation of a paſſage I have read, (I think in Charron de la Sageſſe,) but I cannot now find it.

The ſtory of the Clown, in Gil Blas, who imitated the pig, is to be found in Phedrus, V. 5.; and that of the Dog and the Cadi is in a collection of ſtories, in Latin, printed at Baſle in 1541; the title of which is, "Con-"vivialium Sermonum liber auctore Joanne "Peregrino Petroſelano." Le Sage, indeed, tells it better, and has turned the prieſt, in the original, into a judge.

Many

Many authors, French and Engliſh, have been obliged to Charron without making him the leaſt acknowledgment; among others, Mr Pope: *e. g.*

"The proper ſtudy of mankind is man."
POPE.

"Le vrai etude de l'homme, c'eſt l'homme."
CHARRON, ch. I.

See man for mine, replied a pamper'd gooſe.
POPE.

"Comme ſi tout n'avoit eté fait et ne ſe "remuoit que pour lui. En ce ſens l'Oyſon "en pourroit dire autant."
CHARRON, ch. VIII.

Of Hiſtory and Poetry.

If Mr Godwin's Syſtem, or even the Pacific Agricultural Syſtem, were to be adopted by nations, a great revolution muſt, of courſe, take place in the republic of letters.

It would nearly annihilate hiſtory, for that of a nation of huſbandmen would not be much more intereſting than Swift's Gazette of a Farm.

The alteration, however, though fatal to the hiſtoriographer and the hero, would be moſt beneficial to men in general; for the hiſtory of every country has, hitherto, proved a ſeverer ſatire on the human race than any in Juvenal.

It would alſo put an end to Epic Poetry; that, indeed, ſeems already in a great meaſure

ſure to have ſpent itſelf; but the French revolution may again ſet it a-going for ſome time. It affords a number of new topics, and ſuch a genius as Lucan would ſuit it admirably. It probably will be attempted by poets in different countries.

I never could ſee any ſolid reaſon for making verſe eſſential to Epic Poetry; nor when ſuch poems are written in verſe, for uſing the long one of ten ſyllables, that of eight would anſwer juſt as well. Nobleneſs of thought and expreſſion, not length of verſe, are neceſſary to grandeur and ſublimity.

> To have the power to forgive,
> Is empire and prerogative;
> And 'tis in crowns a nobler gem,
> To grant a pardon, than condemn.

Would any word of addition to each of theſe verſes improve them?

The length of the verſe frequently obliges the poet to uſe a number of expletives, generally epithets, which may be left out without injuring the verſe, which is then reduced

ced to eight ſyllables. Take, for example, the beginning of Pope's Tranſlation of the Iliad.—

Achilles' wrath to Greece, the *direful* ſpring
Of woes unnumber'd, *heavenly* goddeſs ſing;
That wrath which hurl'd to Pluto's *gloomy* reign
The ſouls of *mighty* chiefs untimely ſlain;
Whoſe limbs unburied on the *naked* ſhore,
Devouring dogs, and *hungry* vultures, tore.

The ſix adjectives, or epithets, in italics, may be left out without injuring the ſenſe, and the verſes then become doggerel.

Achilles' wrath to Greece the ſpring
Of woes unnumber'd, goddeſs ſing, &c.

How different is the following paſſage in his Eſſay on Man!

Pride then was not, nor arts, that pride has made:
Man walk'd with beaſt, joint tenant of the ſhade;
The ſame his table, and the ſame his bed;
No murder fed him, and no murder clad.
In the ſame temple, the reſounding wood,
All vocal beings hymn'd their equal god;
The ſhrine, with gore unſtain'd, with gold undreſt,
Unbrib'd, unbloody, ſtood the blameleſs prieſt:
Heav'n's

Heav'n's attribute was univerſal care,
And Man's prerogative to rule, but ſpare.
Ah! how unlike the man of times to come!
Of half that live, the butcher and the tomb;
Who, foe to Nature, hears the general groan,
Murders their ſpecies, and betrays his own.
But juſt diſeaſe to luxury ſucceeds,
And ev'ry death its own avenger breeds;
The fury-paſſions from that blood began,
And turn'd on Man, a fiercer ſavage, Man.

In this paſſage there are but few epithets, and none of them expletive; there are three indeed in one line, but each of them is an argument. Pope is ſuperior in this paſſage both to Ovid and Thomſon, who have treated the ſubject, and very well too. This tranſlation of the Iliad is, in truth, much ſuperior to the original, with which I have often compared it in many of the moſt trying paſſages.

In the Preface to the fifth volume of Gronov. Theſaur. Antiq. there is a particular and curious account of the way and manner in which Piſiſtratus put together the poems called Homer's. It is taken from an unpubliſhed Commentary of Diomedes Scholaſticus, on the Grammar of Dionyſius the Thra-

cian. It is in ſubſtance as follows :—Piſiſtratus not being able to find the poems of Homer entire, but that one man had one hundred, another two hundred, and a third one thouſand of his verſes; advertiſed over all Greece, that, whoever brought to him verſes of Homer, ſhould receive ſo much a line; all who brought them received the promiſed reward, even thoſe who brought lines which he had already got from others. Sometimes people brought him verſes of their own for thoſe of Homer; theſe are now marked with an obeliſk.

After having thus made a collection, he employed ſeventy-two grammarians, to put together the verſes of Homer in the manner that they thought beſt, allowing them a handſome gratification. After each had ſeparately arranged the verſes as he thought beſt, he brought them altogether, and made each ſhew to the whole his own particular work. They having all in a body examined carefully and impartially, gave the preference to the compoſitions of Ariſtarchus and Zenodotus, and determined that the former had made the beſt of the two.

They

They were not deceived by the verſes that were not Homer's; theſe were furniſhed merely to increaſe the number of lines and amount of the reward, but they marked them with an obeliſk.

Chriſtina, Queen of Sweden.

CHRISTINA was a very extraordinary character. Her father, the great Guſtavus, who was killed at the age of thirty-eight, when ſhe was an infant, ordered, by his will, that ſhe ſhould have a maſculine education: this was unlucky, for ſhe had too maſculine a turn from nature: the conſequence was, that ſhe became *une femme ſcavante*, in a very great degree. She would not hear of marriage; and, after eight years conſideration, ſhe abjured the proteſtant religion, reſigned her crown, abandoned her country, and took up her chief reſidence at Rome, where ſhe died in 1689.

She had the body of a woman, but the ſoul of a man; a bold, elevated, penetrating ſoul. In her Collection of Sentiments, there are ſeveral brilliant, ſingular, deep, and alſo ſome abſurd thoughts: ſhe uſed to ſay, "Communement on eſtime l'experience, &

"les

" les vieillards s'en glorifient: cependant j'en " fais peu de cas & je n'eſtime que le juge- " ment & l'eſprit: Les affaires & les conjonc- " tures ſont comme les viſages, aucunne reſ- " ſemble jamais en tout et l'experience ne " ſert qu'a faire des fautes, ſi l'on manque " d'eſprit & de jugement*." This is a very judicious obſervation; a lawyer, who has not got juſt principles of law and good ſenſe, will be very apt to miſapply deciſions in quoting them, as being analogous to any particular caſe; and, for the ſame reaſon, inferences ought to be cautiouſly drawn from precedents in any matter, and, at the ſame time, drawn always with the greateſt circumſpection: all circumſtances muſt be attentively conſidered, in order that one may be quite certain that it is a caſe in point.

Chriſtina likewiſe juſtly obſerves†, " Il " faut plus de coeur pour s'expoſer aux mal- " heurs du marriage, qu'a ceux de la guerre, " & j'admire le courage de touts ceux qui " ſe

* See Memoirs of Chriſtina, Queen of Sweden, written in French. † Ibid. p. 41.

" ſe marient; mais on fait ce terrible con-
" trat commes touts les autres choſes de la
" vie, dont on ne conſidere preſque pas l'im-
" portance, ni a quoi l'on s' engage." This is a very ſhrewd remark too; and, accordingly it will be found, that, at a certain period of ſociety, the number of batchelors increaſes.

The following remarkable obſervation ſhews what a fanatic ſhe was before her death:—" Quand Dieu nous auroit formés
" expres pour bruler eternellement comme
" des Tiſons dan l'Enfer, il ne meriteroit pas
" moins d'etre aimé & adoré de nous*."

One of Chriſtina's extraordinary actions, while ſhe lodged in the King of France's palace, at Fontainbleau, gave riſe to a very curious queſtion of general law.—She ordered an Italian gentleman, who was in her ſervice, to be put to death in the *Chambre des Cerfs*, for having betrayed her, as ſhe alledged,

* Ibid. p. 28.

ged, and apparently with reaſon. The prieſt, whom ſhe ſent to confeſs him before his death, expoſtulated with her on various grounds, and, among others, on her want of power: "Comment mon pere dit elle, moi "qui doit avoir une juſtice ſouveraine & ab- "ſolue ſur mes ſujets, je ſerois reduite a ſol- "liciter contre un traitre domeſtique du for- "fait & de la perfidie du quel j'ai preuves en "main ecrites & ſignées de la ſienne propre*." Accordingly this gentleman was, at her deſire, ſtabbed.

The king of France, however, did not reliſh this, and it is ſaid that he conſulted lawyers, and was adviſed, that ſhe had power to do what ſhe had done: the king accordingly, probably more from prudence and politics than from confiding in any ſuch opinions, took no more notice of the affair, farther than ſhewing a coldneſs to Chriſtina, which made her leave France.

* Id. IV. 7.

Several eminent lawyers of thoſe days took up the queſtion, and wrote treatiſes, ſome on one ſide, ſome on the other*; one of them, Teſmar, wrote in her juſtification, what he calls *Tribunal principis peregrinantis, ſive, ex illuſtris facti ſpecie, diſputata juris queſtio*; but others maintained with great force the oppoſite doctrine, and inſiſted that ſhe had no right, ſhe and her ſuite being only *Cives temporarii* of France. I am much inclined to think that ſhe had no ſuch power, (had ſhe even ſtill been a ſovereign, which ſhe was not,) becauſe I think it is an eſtabliſhed maxim in Law, as well as in prudence,

Cum fueris Romæ, Romano vivito more,
Cum fueris alibi, vivito more loci.

At leaſt, clear it certainly is, that nothing ought to be done by a ſtranger openly, which is repugnant to the morality, laws, or religion of a ſtate; and this obligation on a foreigner is implied on his entering a ſtrange

* Id. II. 2.

ſtrange country, unleſs permiſſion be previouſly obtained from the civil power, otherwiſe all kinds of the moſt infamous crimes might be committed with impunity in any ſtate.

Chriſtina, in juſtification of what ſhe had done, lays down this maxim: "Il faut punir dans la forme de la juſtice quand on peut, mais quand on ne peut pas, il faut toujours punir comme on peut." From this ſtrange remark, it would ſeem that ſhe had perceived the force of the obſervation on which Helvetius inſiſts ſo much: he ſays, "Les paſſions ſont le ſel de la vie, on n'eſt heureux, ni mal heureux, qu'a proportion qu'on les a violentes."

Teſmar, in his Treatiſe in ſupport of the Queen, adds a qualification which ſeems to give up the queſtion, that a ſovereign, when travelling, muſt take two precautions; "que la punition ne ſe faſſe que pour des cas bien graves & bien preſſantes & en ſecond lieu, qu'elle ne faſſe ſans eclat, et que le crime ſoit averé, ou du moins qu'il y ait de fortes preſomptions a la charge

"du coupable *." But the queſtion is a queſtion of power. If there be room for theſe inquiries, it is not the travelling ſovereign, but the ſovereign of the place that has the power and the juriſdiction.

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* Memoirs, p. 12.

Of

SOCRATES.

It is clear enough, from Xenophon's Memoirs of, and Apology for Socrates, that his trial was occaſioned by his wit, and his acquittal prevented by his vanity. We have Xenophon's own authority for the firſt propoſition; for he relates an anecdote, from which it appears that a ſarcaſm of Socrates againſt Critias was taken very much amiſs, and alſo the aſſertion of Socrates himſelf, on ſeeing one of his accuſers paſs by. (See the Memorab. lib. II. ſec. XXXVII. and the Apology ſec. XXIX.

Of the ſecond, there is proof enough from his defence, the vanity of which is very diſguſting. Xenophon ſays, it offended the judges much, and they interrupted him. He tells us, that he does not give all the particulars of the trial; and it is a pity he did not, eſpecially the evidence brought againſt him.

Socrates,

Socrates, in the ſpeech he made after his condemnation, complains of falſe witneſſes having been adduced againſt him: be this as it may, Xenophon ſays, that he might have got off on paying a fine; but he would neither pay it himſelf, nor allow any of his friends to pay it for him; nor would he make his eſcape. He ſaid, "It was better to die, than to languiſh in old age." But his real reaſon for chuſing to die, ſeems to have been vanity.

Socrates was really a philoſopher:—he was as good as he was brave, but he was a man. Vanity was his ruling paſſion. He ſaw, therefore, that his immortality depended on his being unjuſtly put to death.

This Rouſſeau ſeems to have perceived; for in a paſſage quoted by Mercier, in his book entituled "Rouſſeau conſideré comme l'un des premiers auteurs de la Revolution," v. I. p. 31. he expreſſes himſelf thus:—"Si "cette facile mort n'eut honoré ſa vie, on "douteroit ſi Socrate avec tout ſon eſprit, "fut autre choſe que ſophiſte."

The

The ſpeech which Plato makes for him after his condemnation is much ſuperior to that in Xenophon; and indeed Plato gives one quite a different picture of him in every reſpect. I neither loved nor admired Socrates on reading Xenophon, but I did on reading Plato's Apology: the detail of his death, with which Phædo concludes, is very affecting.

Mr de Paw, in his *Rech. Philoſ. ſur les Grecs*, quotes a paſſage from an oration of Æſchines, in which he tells the Athenians, in ſo many words, that they had put Socrates, the ſophiſt, to death, becauſe he had been the tutor of Critias one of the thirty tyrants who overturned the democracy. Æſchines certainly ſays ſo; and it is ſtrange he ſhould have ſaid ſo, if it had not been the fact; but it is as ſtrange, that the apologiſts of Socrates ſhould have omitted this circumſtance had it been true.

A Dis-

A DISSERTATION *to prove that* TROY *was not taken by the* GREEKS.

Printed in the TRANSACTIONS of the ROYAL SOCIETY in 1788, with additional notes and obſervations, by the Author.

Quos neque Tydides, nec Lariſſæus Achilles,
Non anni domuere decem, non mille carinæ. VIRG.

IT cannot well be diſputed, that, till the Greeks were poſſeſſed of the art of writing, they could have nothing that deſerved the name of Hiſtory. When that art was introduced among them is uncertain; but there is reaſon to believe it was not known to them at the time of the Trojan war, as there is no mention of any writing in all the works of Homer; for the tablets, of which he ſpeaks in one paſſage, did not contain any

any writing, but only marks or ſigns *. At any rate, it cannot be ſuppoſed, that writing was much known or practiſed at that time, or indeed for long after. It appears from many charters, and other deeds, in this country, that men of the firſt families and fortunes in it could not, a few centuries ago, write their names; and yet it is clear, from our having the uſe of coined money in commerce, and of cavalry in war, as well as from ſeveral

* Iliad. vi. 168. So Euſtathius ſays expreſsly; and the reaſon he aſſigns is, that letters were the invention of later times. He might have added, that it appears from ſeveral other paſſages in Homer, that with him γραφειν does not ſignify to *write*, but *to trace* or *mark;* nor σημα *a letter*, but *a mark, or ſign*, or *credential.* Iliad vii. 175. 187. 188, 189.; and Odyſſ. xxiv. 328. And σημα has unqueſtionably this ſignification in xxiii. 206. In this paſſage reſpecting *Bellerophon*, had Madame Dacier and Mr Pope adverted to this, they would not have tranſlated this paſſage as they have done. Πεμι δι οι σημαλα λυγρα, clearly means, that he gave him a token or credential that was meant to be deſtructive to him; and γραψας θυμοφθορα πολλα, that he traced (in theſe folded tables) many marks, or ſigns, to ſhew that he was deſirous of his death. There is, likewiſe, no mention of writing in the Æneid; which ſhews, that Virgil thought it the invention of later times.

ſeveral other circumſtances, that we were more civilized in thoſe days than the Greeks could pretend to be when they firſt invaded Aſia.

Thoſe, therefore, of the Greek writers who choſe to relate ancient events, might ſhape their ſtories as they pleaſed. There could be nothing to contradict them, but a vague and confuſed tradition, (if there was ſo much) which, it is plain, would at no time be much regarded, and would ſoon be forgot or diſbelieved, if the accounts of theſe writers were more flattering or favourable to their countrymen. Indeed the Greeks ſeem all along to have had a natural inclination to pervert and falſify facts, and this drew upon them the ſevereſt reproaches from the lovers of truth.

——— *Quicquid Græcia mendax*
Audet in hiſtoria.

It may, perhaps, be ſaid, that this is no more than the aſſertion of a Roman ſatiriſt, which ought not to be liſtened to. But it is eaſy to ſupport Juvenal's teſtimony by that of

of ſome of the moſt judicious Greek writers themſelves. Diodorus Siculus informs us, that the ancient hiſtorians contradicted one another ſo much, that thoſe of later times, who felt they had talents for writing hiſtory, abandoned all remote, and betook themſelves to recent periods*: and Thucydides ſhews, that not only with regard to ancient, but even as to recent events, the Greeks, his contemporaries, were very ill informed. In his introduction, he expreſſes himſelf as follows:—"It is very difficult to find out the "truth as to ancient affairs; for men con- "tent themſelves with reports as to paſt "events, without being at the trouble to ex- "amine them, even though they relate to "their own country." And he refers, for proof, to the celebrated ſtory of Harmodius and Ariſtogiton. Of this he gives the detail in his ſixth book; "Becauſe neither the "Athenians, nor others, knew who was the "tyrant at the time, or what was the real "fact that happened." Poems had been com-

* Lib. IV. initio.

poſed, and ſtatues erected, in honour of thoſe men, as being the champions of liberty, and the deliverers of their country, by a bold ſtroke, in putting its tyrant to death; but it appears, from the narrative of Thucydides, that all this was undeſerved, and proceeded from a groſs miſtake: for they did not kill Hippias, who was the tyrant, but his brother Hipparchus; and him, not from a love of their country, or hatred of tyranny, but from very unworthy motives, which it would be indelicate to explain*.

If the Athenians, (the moſt enlightened people of Greece,) could be ſo miſled as to an event which happened but eighty-two years before the Peloponneſian war, what liberties might not Homer take, in relating the circumſtances of an expedition which preceded, by many centuries, the age in which he lived, and as to which, in all probability, there was no record or writing whatever?

It

* It took its riſe from παιδεραστια. Thucydides ſays Ariſtogiton ειχεν αυτον.

It is, indeed, ſuppoſed by the author of the life of Homer, commonly aſcribed to Herodotus, that he was only 168 years later than the Trojan war; but, from what Thucydides ſays, it ſhould ſeem that he thought he was long poſterior* to it; and that, in fact, he was ſo, is apparent from ſeveral paſſages in his works. In one place, he ſays, that Diomede lifted, brandiſhed, and threw a ſtone, which two men, ſuch as men are now a-days, would not be able to carry: and, in another, that Hector lifted, brandiſhed, and threw a ſtone, which two men, ſuch as men are now a-days, would not be able to heave from the ground into a cart. But ſo great a degeneracy could not have happened in a century and a half; beſides, that he wrote from report, and knew nothing certain, he himſelf declares, in his addreſs to the Muſes, with which he introduces the catalogue of the Grecian ſhips and forces; which implies, that he was not only very long poſterior to the event he choſe for his ſubject,

* Πολυ υ'στερον.

ſubject, but that there was no record or hiſtory of it extant when he wrote.

Many proofs might be brought of Homer's ſtory being generally diſbelieved or doubted of among the ancients. A few ſhall be mentioned: And, firſt, I refer to the hiſtory of Helen's birth.—Læda, the wife of Tyndarus, was delivered (it is ſaid) of two eggs, in one of which were Pollux and Helen; in the other Caſtor and Clytemneſtra. The former being the offspring of Jupiter, metamorphoſed into a ſwan, were immortal; the latter, coming from Tyndarus, ſubject to diſſolution. And it is added, that, when Caſtor drew near his end, his brother begged of the gods that he might be exempted from death as well as himſelf. This, it ſeems, could not be altogether complied with; but, to gratify him as far as fate would permit, it was decreed that they ſhould live and die by turns. This is evidently an allegory, and generally thought to be an aſtronomical one. Now, if Helen was not a real, but an allegorical perſonage, what becomes of the Trojan war?

The

The ſtory of the egg is not to be found in Homer; but the alternate life and death of Caſtor and Pollux is mentioned in the Odyſſey*, though not conſiſtent with a paſſage in the Iliad, to be afterwards quoted, which declares them both dead. Madame Dacier, in a note on this paſſage of the Iliad, ſays, that the fable of Caſtor and Pollux was poſterior to Homer; but the paſſage of the Odyſſey, juſt now referred to, proves the contrary. Horace ſeems to have thought, that the whole had been invented before Homer's time, as he commends him for not having begun with the egg:

Nec gemino Trojanum bellum orditur ab ovo.

But there would have been no place for the compliment, if he could not have committed the fault. Be that as it may, the allegory is certainly of a very ancient date, and proves, that the authors of it did not believe Homer's account of the Trojan war. Indeed

* xi. 302.

deed it goes further: it proves, that they did not believe there had been a Trojan war at all; in ſupport of which opinion, much may be, and has been ſaid*.

2dly, It is clear that Herodotus diſbelieved, or very much doubted the Greek account of the Trojan war. That very intelligent and inquiſitive hiſtorian informs us†, That he aſked the Egyptian prieſts, whether what the Greeks alledged to have happened at Troy, was *a fooliſh ſtory*‡? And he ſays they told him, that Paris and Helen, in their paſſage from Sparta to Troy, were overtaken by a ſtorm, which drove them to Egypt, where ſome of their ſervants having diſcloſed the crime that they had committed, Proteus, who then reigned at Memphis, ſeized and detained their perſons, and the effects which they had brought with them: That when the

* See Pernety's *Fables Egyptiennes et Grecques devoilées, tom. ii.* and that the hiſtory of the Trojan war was no more than an allegory, is taken for granted by Gebelin de la Cour, in his *Monde Primitif*, ii. 400; and by Bryant, in his Mythology. † Lib. 2. ‡ Ματαιος λογος.

the Greeks came before Troy, and demanded back Helen and her effects, the Trojans anſwered, that they had neither, both being in Egypt; but the Greeks, not believing this, beſieged the town, and took it; and then Menelaus, finding that what they had ſaid was true, proceeded to Egypt, where his wife and goods were reſtored to him. Herodotus then quotes ſeveral paſſages of the Iliad to prove, that Homer knew Helen was not in Troy, but in Egypt, and had perverted the fact for the ſake of his poetry. He adds, that he, too, ſubſcribes to what was ſaid with regard to Helen's not being in Troy, for this reaſon, that it was impoſſible to believe Priam ſo devoid of underſtanding, as that he would have expoſed his kingdom to deſtruction for a woman, if he had had her to deliver up.

This is a very curious paſſage. It proves clearly, that Herodotus, before he converſed with the Egyptian prieſts, doubted extremely of the account given by the Greeks of the Trojan war. He ſeems, however, to have altered his opinion, in conſequence of what they told him Menelaus had reported when

he came to Egypt. That account, if true, removed, no doubt, the chief difficulty he had, which was, the incredibility of Priam's refuſal to reſtore Helen, when demanded by the Greeks; but, if he had reflected a little, he muſt have been ſatisfied, that it could not be true that Helen was not in Troy during the ſiege. If ſhe had not been there, it is impoſſible to believe that the Greeks would not have diſcovered this in leſs than ten years. They muſt very ſoon have come at the fact. When they did, they would have retired, if the recovery of her and her effects was the object of the war. Or, ſuppoſing that the hope of plunder would have made them continue it, yet Menelaus ſurely would have gone for her to Egypt himſelf, or, at leaſt, ſent ſome perſon thither to enquire about her. Indeed, the aſſertion of the Trojans was, of itſelf, ſufficient to have induced him to take that trouble. This has been remarked by Riccius*, who juſtly maintains, that Homer's ſtory, as to this point, is the more credible of the two: "Quis vero non videat,

* Diſſert. Homer. vol. ii. diſſ. 40. p. 216.

" videat, magis præ ſe ferre ſpeciem fabulæ
" id quod narrabant ſacerdotes, quam quod
" habet Homerus; eſtne, quæſo, veriſimile
" in ea ambiguitate perdurare voluiſſe Græ-
" cos decem annos? Cum recipiendæ Hele-
" næ tam eſſet cupidus Menelaus, non mit-
" teret ſtatim aliquos in Egyptum qui ex-
" quirerent, an vere apud Proteum illa deti-
" neretur? Non id omnino faciendum cen-
" ſerent frater Agamemnon ſupremus copia-
" rum imperator, Neſtor aliique duces? Quæ
" major abſurditas, quæ inſignior impruden-
" tia, quæ craſſior ſtoliditas de Græcis duci-
" bus virtute et conſilio celeberrimis confingi
" unquam poſſit?"

Several ancient authors thinking it improbable that Helen was in Troy, and ſeeing the force of the argument againſt the ſuppoſition of her not having been there, contrived a fiction to reconcile the two accounts, viz. That Venus had created a ſhape, or figure, ſo exactly like Helen, that Paris carried the counterfeit* with him to Troy, believing it

* Εἴδωλον.

to be the celebrated Beauty herſelf. Euripides's tragedy of Helen turns entirely upon this; and Muſgrave, in his notes, conjectures, that the ſtory had been contrived by Helen, in conjunction with the Egyptian prieſts, to re-eſtabliſh her character after her return to Greece. It is plain, however, that, according to the Egyptian prieſts and Herodotus, Homer has falſified the ſtory in one material circumſtance; if ſo, it is impoſſible to ſay where he would ſtop.

3*dly*, Although Thucydides, in his introduction, does ſuppoſe the truth of the Grecian expedition againſt Troy, and refers to Homer for ſeveral particulars, yet he once and again enters the caveat, "if any credit is to be given to his poems."

Laſtly, Pauſanias ſays, in ſo many words, that he gives more credit to Homer than the *generality* of people do. The expreſſion in the original* is rather ſtronger; and it is certain, that ſeveral ancient authors, whoſe works

† Ὁι λοιποι, p. 160. edit. 1696.

works unfortunately have not reached us, arraigned Homer of falſehood, in treatiſes written on purpoſe to convict him of it*. I will not quote from Lucian, as his levity might be objected to, but only obſerve, that, if the common chronology be juſt, he had good reaſon to laugh at the ſuppoſition of Paris falling in love with Helen, or of her being an object of contention to Aſia and Greece, as it is demonſtrable that ſhe muſt have been about an hundred years of age when Troy was taken; for, according to the common chronology, ſeventy-nine years elapſed between the Argonautic expedition and the taking of Troy; now ſhe was the twin-ſiſter of Pollux, who was one of the Argonauts, and who fought and beat a famous boxer in the paſſage to Colchis, and therefore cannot be ſuppoſed, at that time, under eighteen or twenty. Bayle, in his dictionary, has taken notice of Helen's great age; and a witty author has compared her to the famous Ninon de l'Enclos, who made an aſſignation on the

* See an enumeration of them in the preface to Philoſtr. Heroica, p. 603. edit. 1709.

ſelf. As the detail which Chryſoſtom gives is not vouched or authenticated in any ſhape, I ſhall ſtate no more of it than is neceſſary for underſtanding the argumentative part of his diſcourſe, which merits the greateſt attention. Caſaubon, who writes ſome notes on this author, ſays of this diſſertation ;— "Dignus plane liber hic, quem legant philo- "logi, et quicunque in veterum ſcriptis cum "judicio cupiunt verſari ; quamvis et pro "Homero multa dici poſſunt."

It is not, however, my intention to tranſlate this part of the diſcourſe, nor even to abridge it ; but only to ſelect from it the arguments that appeared to me the moſt concluſive and ſtriking, to enforce them by ſome additional conſiderations, and to add ſome obſervations that have occurred to myſelf in reading and reflecting on this important and intereſting article of ancient hiſtory.

According to this author, Helen, the daughter of Tyndarus, king of Sparta, was, by far, the moſt beautiful woman of her time, and had a great number of ſuitors, amongſt whom were Menelaus and Paris. The latter was pre-

preferred by the lady to all the reſt, on account of the graces of his perſon and addreſs; and his magnificent preſents obtained the conſent of Tyndarus, her father, who, beſides, was deſirous of connecting himſelf with Aſia.

Upon this, Menelaus, and the other Greeks, partly from reſentment of the affront which they thought they had received, and partly from the hope of plunder, invaded Troas.

Many auxiliaries came to the aſſiſtance of Priam, and an obſtinate and bloody war enſued, in the courſe of which great numbers fell on both ſides; but the Greeks had all along the worſt of it. They loſt a great number of troops, and ſome of their braveſt commanders. Hector, according to this author, inſtead of being ſlain by Achilles, himſelf ſlew both Achilles and Ajax; though Homer, to cover this diſgrace, has made the former, who was the braveſt of the Greeks, periſh by the hand of Paris, the moſt daſtardly of the Trojans; the latter by his own. At laſt, after ſuffering an infinity of hardſhips

and loſſes, the Greeks were glad to retire as they beſt could. He gives a very long detail of the war; but, for the reaſon already mentioned, I enter not upon it, but proceed to the real evidence he offers of the falſity of the common ſtory.

In conſidering this matter, it will be proper to view the circumſtances and ſituations of perſons and affairs, as at four different periods: 1*ſt*, Before the voyage of Paris to Sparta. 2*dly*, As at the time of his arrival there, 3*dly*, During the war. And, *laſtly*, After the taking and ſacking of Troy.

It is by no means probable, that Paris would fall in love with a woman whom he had never ſeen; and ſtill leſs ſo, that he would form the deſperate and nefarious project of carrying her off from her huſband, a powerful king, who lived at a conſiderable diſtance, and beyond ſeas.

Chryſoſtom might have added, that the force of this objection was foreſeen; and that, to obviate it, was invented what is called the *judgment of* Paris; for it was not the ſhepherd of

of Ida that conceived this plan; he was put upon it by Venus, who promiſed him ſucceſs in reward of his having adjudged the apple to her.

But further, Paris could not get a ſhip or a crew, without the conſent or connivance of his father; yet it cannot be believed that Priam, an old, wiſe, and good king, would give any countenance to ſuch an undertaking.

Let it be ſuppoſed, however, that Paris, ſomehow or other, got a ſhip and crew, and arrived at Lacedæmon, when Menelaus and her brothers were abſent, (for it is ſurely neceſſary to ſend them away;) and let it be ſtill further ſuppoſed, that he had been able to perſuade her to forſake her huſband, her child, and her country, and to follow, to her own eternal diſgrace, a young adventurer to a ſtrange land; yet ſtill unſurmountable difficulties ſtood in the way of his carrying her off. For, it muſt be obſerved, that Lacedæmon was not a ſea-port town, but a mediterranean place, being many miles up the country, as appears from the map; and fur-

ther, that Paris did not only carry off Helen, but her effects, which conſiſted in bulky goods, ſuch as, wearing apparel, carpets, tapeſtry, and veſſels of different kinds. It was impoſſible, therefore, for Paris to carry her off ſecretly. He muſt have done it openly and avowedly, and in the face of the ſun; and a number of horſes and carriages were neceſſary to tranſport the lady and her baggage from Lacedæmon to the ſea-port. Now, ſuppoſing Menelaus abſent, is it poſſible to believe that his ſubjects would have ſat with their arms acroſs, and beheld the wife and the wealth of their king carried off by a handful of banditti?

It is not eaſy to figure a tolerable anſwer to this objection. The author of one of the ſpurious hiſtories of the Trojan war, in Latin, felt its force, and, to avoid it, pretends, that Paris met with Helen in the iſland of Cythera, near the coaſt of Sparta. But this is inadmiſſible; for, in the *firſt* place, Homer expreſsly ſays, in a variety of paſſages, that Helen was brought from Lacedæmon to Troy; and, *2dly*, That not only ſhe, but all her valuable effects were carried off; and ſhe cer-

certainly would not have theſe with her, when upon an excurſion to an iſland in the neighbourhood.

We come now to the period of the war. It is very ſurpriſing that the Trojans did not deliver up Helen to the ambaſſadors ſent from Greece; as the demand was not only founded in juſtice, but enforced by the threat of an invaſion. It is ſtill more ſurpriſing, that they ſhould perſiſt in their refuſal, when they ſaw themſelves attacked with 1200 ſhips and 100,000 men. What is moſt aſtoniſhing of all is, that they did not reſtore her upon the death of Paris, but married her to his brother Deiphobus. Here Chryſoſtom argues, and with great plauſibility, that this is perfectly incredible, upon the ſuppoſition that Paris had poſſeſſed himſelf of her by a crime; but by no means ſo if he obtained her in marriage with her father's conſent; for then the groſſeſt injuſtice was on the ſide of the Greeks; and it is not at all ſurpriſing, that the Trojans ſhould have been willing to ſuffer the laſt extremities rather than ſubmit. This laſt ſuppoſition is further confirmed by this circumſtance, that Caſtor and Pollux, the bro-

brothers of Helen, did not go upon this expedition, though they both were alive at the time of her pretended elopement*.

Ten years elapſed, after the elopement of Helen, before the Greeks laid ſiege to Troy. This we learn from her lamentation over the dead body of Hector; for there ſhe is made to ſay expreſsly, that ſhe was now in the twentieth year of her abſence from her native country†; and, as it is agreed that the ſiege of Troy laſted ten years, it follows, that the ſame period had elapſed from her being carried off to the landing of the Greeks in Aſia. This circumſtance Chryſoſtom has overlooked; but it ſeems to deſerve attention. So long a delay cannot well be accounted for.

The ſcholiaſt, upon the above paſſage, who ſeems to have foreſeen the obſervation, ſays, that this time was ſpent in aſſembling the Grecian army; but as the Grecian princes lived

* Il. iii. 236. † Il. xxiv. 765.

lived at no great diſtance from one another, and all their men were accuſtomed to the uſe of arms, it could not be difficult to bring them ſoon together; and, if it be ſuppoſed that they came to the place of rendezvous at different times during this long period, it is not eaſy to ſee how they could be ſubſiſted; beſides, it cannot be doubted that her relations, and eſpecially her huſband, would haſten the invaſion as much as poſſible.

At this rate, the beauty of Helen muſt have been upon the wane when the ſiege began, and quite over by the time it ended. For which reaſon, Mr Wood, in his life of Homer, regrets that this circumſtance was introduced into his poem, as it is far from being agreeable, and not at all material. He might have added, that it is not conſiſtent with the exceſſive encomiums which even the old men of Troy beſtow on her charms, in the tenth year of the ſiege; or the extravagant compliment they pay her, that it was not at all ſurpriſing the Greeks and Trojans ſhould have ſuffered ſo much and ſo long for her. The probability is, that this circumſtance was invented by Homer to give an air of credibili-

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ty to ſome others; particularly, to account for the abſence of Caſtor and Pollux. In the third book of the Iliad, Helen expreſſes great ſurpriſe becauſe ſhe did not ſee her two brothers among the Grecian commanders. This was in the tenth year of the ſiege; and Homer adds, "But they had both died at Lacedæmon a long time before." This proves they were alive at the time of the elopement; and that he thought it neceſſary to account for their not being at the ſiege.

The Greeks, however, did at laſt make their appearance before Troy; but the town was not taken till after a ten year's ſiege*. This

* M. Fourmont, in a diſſertation, in tom. 5. *des Mem. de l'Acad. des Inſcrip.* pretends, that the ſiege began only three weeks or a month before the quarrel between Agamemnon and Achilles, which happened in the beginning of the tenth year; and that the reſt of the time had been ſpent in expeditions againſt different places in Aſia. M. Fourmont ſays, unanſwerable objections may be made to Homer's account on the other ſuppoſition. The Abbé Banier has written an anſwer to this diſſertation, in which he proves, from ſeveral paſſages in Homer, that the ſiege laſted ten years; but has been by no means able to anſwer the objections that ariſe from that ſuppoſition. See tom. V.

This is the moſt puzzling circumſtance of all; eſpecially when it is conſidered, that Homer tells us, that it had been taken formerly by Hercules with only ſix ſhips, and had, by him, been levelled to the ground.

The Greeks, by Homer's account, were always greatly ſuperior in numbers to the Trojans and their auxiliaries; and, for more than nine years, they had Achilles with them*, whom Homer has, on all occaſions, repreſented as perfectly irreſiſtible to the Trojans. How then came it about that the war laſted ſo long?

The only anſwer that can be made to this is, that the Trojans kept within their walls as long as Achilles appeared; and this Homer himſelf ſuggeſts†, though it is contradictory to ſeveral other paſſages, where it is ſaid, that many battles had been fought, and great numbers ſlain on both ſides.

* Il. viii. 558. † Il. vii. 352; xviii. 287.

But this will not prove ſatisfactory, when it is conſidered that Andromache, in the interview ſhe has with Hector in the ſixth book, tells him, that the city was to be come at, and the wall eaſily ſcaled*; and that Ajax, Agamemnon, Menelaus, and Diomed, had three times attempted it. If ſo, what hindered Achilles to ſtorm the town the day after he landed? How came Ajax, and the other chiefs, to be ſo long in threatening an aſſault? Madame Dacier, in a note on this paſſage, ſays, That the art of reconnoitering was not known, at this time, even to the Greeks. The abſurdity of the anſwer ſhews the force of the obſervation. A wolf, fox, or other beaſt of prey, that wants to get into a fold, or cloſe, where ſheep or cattle are confined, would walk round it to diſcover at what place the fence was loweſt†.

But

* Il. vi. 434.

† Herodicus, quoted by Heraclides Ponticus, whoſe treatiſe is in Gale's Opus. Mytholog. p. 424, ſays, it would have been abſurd in the Greeks to have laid ſiege to Troy till the tenth year; as they knew from the prophecy of Calchas, (Il. ii. 322.) that it was not to be taken till the tenth year; they, therefore, went up and down plundering the reſt of the time.

But further, ſuppoſing the town to have been impregnable, how came the Greeks not to take it by blockade? They had a powerful fleet, the Trojans none; ſo that it was eaſy to hinder the town from being ſupplied with proviſions by ſea; and it was equally eaſy to have drawn lines around it, which would have cut off all communication between it and the country; the infallible conſequence of which would have been, that the Trojans muſt have ſurrendered as ſoon as their ſtock of proviſions was conſumed. As the Greeks did not draw lines around the town, whilſt, at the ſame time, we are told, that they threw up a rampart before their own ſhips, and as the Trojans received ſuccours from their neighbours at different times, the fair concluſion is, that the Greeks were not maſters of the country, nor ſuperior to the Trojans in the field, but, on the contrary, found themſelves overmatched. If it ſhall be ſaid, that the art of drawing lines was not known to the Greeks, I anſwer, that the method they took to ſecure their ſhips proves the contrary to be true; and, had they been ignorant of that art, (if ſo ſimple an operation deſerves that name,) they never would have thought

of the ſiege, as they had no artillery or machinery of any kind for making a breach in the walls: beſides, without any art or labour, they could have placed bodies of troops ſo as to intercept all the Trojan convoys.

Homer admits, that the Greeks ſuffered more before Troy than any mortal man could relate*: That they loſt a great number of men, many excellent officers, and that Ajax, Antilochus, Patroclus, and Achilles, the greateſt hero of them all, periſhed in the expedition. This, of itſelf, affords a preſumption that they were not ſucceſsful. It is very improbable that Achilles fell by the hand of Paris; the truth ſeems to be, that he died by that of a better man. Hector poſſeſſed himſelf of his armour, which is not at all ſurpriſing, if he ſlew its owner; but cannot otherwiſe be explained: for, as to the ſtory of Patroclus dreſſing himſelf in the armour of Achilles, and being ſlain and ſtripped by Hector, it cannot poſſibly be true. Achilles was by far the ſtrongeſt and ſtatelieſt

* Odyſſ. xii. 105.

ſtatelieſt of the Greeks: Hector was nothing to him; and Patroclus again was nothing to Hector, as is evident from the anxiety with which Achilles charges him not to encounter Hector. Now, when Hector did get Achilles's armour, he found he could not uſe it; and therefore Homer * makes Jupiter interpoſe to fit it to his body; though, after all, the god did not perform the work ſufficiently; for Hector owed his death to fighting Achilles in that armour, as an aperture ſtill remained near the throat, through which Achilles drove his ſpear. If then the armour of Achilles could not be uſed by Hector, how is it poſſible that it could be uſed by Patroclus, who was ſo much inferior to him? It is palpable, that he muſt have been almoſt as ill fitted with it as David was with Saul's. Homer himſelf admits †, that Patroclus could not wield Achilles's ſpear; how then could he ſupport, not to ſay march and fight, under the load of his armour?

It

* Book xvii. 210. † Il. xvi. 140.

It cannot be denied, that Achilles fell during the ſiege; and it is evident the Greeks muſt have been leſs able to take the town, after this and their other loſſes, than before. Accordingly it is admitted by Homer and his followers, that they did not take it by *force*, but it is pretended that they took it by ſtratagem. Homer's account of which is preciſely as follows *: Epeus made a wooden horſe, into which Ulyſſes and the Grecian chiefs went with a body of troops; the reſt of the Greeks burnt their tents, and ſet ſail. Upon this, the Trojans came down, and, along with them, Helen. She, attended by Deiphobus, went three times round the horſe, calling each of the Grecian leaders by his name, and mimicking the voice of his wife. This made them all, except Ulyſſes, deſirous to get out, or return an anſwer; but he reſtrained them, and clapped his hand on the mouth of one of them, who was more eager to ſpeak than the reſt, and kept him gagged in that manner till Helen retired. The Trojans then drew up the

* Odyſſ. viii. 500.; iv. 271.

the machine to their citadel, and held a conſultation as to what they ſhould do with it. Some were for cutting it up; ſome for precipitating it from the rock; but others thought that it ought to be allowed to remain as a propitiatory figure. This laſt opinion prevailed, and the Greeks came out of it, and, after an obſtinate ſtruggle, vanquiſhed the Trojans, and plundered the town.

The abſurdity of all this is too groſs and glaring to need refutation. Virgil ſaw well the objections to which it is liable, and, to obviate them, has ſtrained his invention to the utmoſt, but in vain. According to him, this horſe was huge as a mountain *; and it was neceſſary it ſhould, as it was to contain an army in its belly. It fell to the lot of Ulyſſes, Menelaus, Neoptolemus, the maker Epeus, and five other leaders, to enter this machine; which they did, with a body of armed men that filled it. The reſt of the Greeks ſailed to Tenedos, which was in ſight *,

* Æneid. ii.

ſight *, and there hid † themſelves on the deſart ſhore. The Trojans, thinking them gone for good, came down, and conſulted about the diſpoſal of the horſe, as is mentioned in Homer. But upon Laocoon, who oppoſed its introduction into the city, being devoured by two ſerpents, they put wheels to its feet, and ropes to its neck, and drew it up to the town, through a breach made on purpoſe in the wall. The Greeks at Tenedos returned at midnight, having the benefit of a bright moon-ſhine; and thoſe in the horſe having deſcended by means of a rope, opened the gates to them, and the Trojans, being buried in ſleep and wine, were eaſily maſtered.

Every perſon who reads this with the leaſt attention muſt perceive, that Virgil had better have couched the ſtory in general obſcure terms, as Homer does. By being particular, inſtead of bettering the matter, he makes it worſe; and there is one ſtriking incongruity, into which it is aſtoniſhing

* In conſpectu. † Condunt.

toniſhing he ſhould have fallen. Tenedos, he ſays, was in ſight; and, no doubt, it was: for its diſtance from the Trojan ſhore is but forty ſtadia, or five miles: it was a bright moon-ſhine, and Troy ſtood on a hill; how then could a *great* army be *hid* from the Trojans on a *deſart* ſhore*? At any rate, it is impoſſible that 1200 ſhips could be concealed from them. They muſt have ſeen the fleet at leaſt. If ſo, it cannot be believed that they would have made a large breach in their wall when the enemy was ſo near. But it would be improper to dwell longer here. Since the town, it is admitted, was not taken by force, and ſince the ſtratagem by which it is alledged to have been taken is abſurd and impracticable, the fair concluſion is, that it was not taken at all; and that we ſhould have read the repulſe of the Greeks in verſe, if time had not envied us the works of the poets of Troy.

Let

* It might; for Tenedos is extremely elevated: ſo Mr Chevalier told me long after I wrote this paper, and he had been upon the ſpot, ſo that this argument flies off. See his map of Troas.

Let us now ſee what happened, according to the Greek writers, after Troy was, as they pretend, taken and ſacked. If the Greeks had been in reality victorious, it is natural to ſuppoſe that they would have returned home in a body, in good order, obſerving due diſcipline and obedience to their General. But, inſtead of doing ſo, Homer tells us *, that they quarrelled among themſelves, differed about the courſe they ſhould ſteer; that ſome went one way, ſome another, and that ſeveral were ſhipwrecked.

But this is not all: if the Greeks had been, in reality, victorious, thoſe who returned would have been received as conquerors, with open arms by their families, and with acclamations by their ſubjects. But the reverſe of this confeſſedly happened. Agamemnon, their captain-general, upon his arrival, was ſlain in his own houſe by a villain who had debauched his wife in his abſence. Would ſuch have been his fate had he appeared at the head of an army of conquerors? And not

* Odyſſ. iii. 136.

not only was he himſelf ſlain, but, according to Homer, all thoſe who returned with him: yet this exploit was performed, he ſays, by Ægiſthus, with no more than twenty men; and he reigned ſeven years in Agamemnon's ſtead *, till he was aſſaſſinated, in his turn, by Oreſtes. Diomed was ſoon driven from his country, and Neoptolemus from Peloponneſus; and, according to the account of the former in Virgil, all who were concerned in the expedition againſt Troy were diſperſed over the earth, and ſuffered every where remarkable hardſhips and diſtreſs,

Vel PRIAMO *miſeranda manus*——
Æn. xi. 259.

The wretched ſituation in which Ulyſſes found his affairs at home is deſcribed, at great length, in the Odyſſey, by Homer himſelf. But unleſs it had been well underſtood that the affairs of the Greeks before

* Ibid. iv. 530.

Troy were deſperate, no ſet of men would have dared to have poſſeſſed themſelves of his houſe, inſulted his wife, and devoured his ſubſtance, as he could have returned and puniſhed them in a few days; for we learn from Homer* and Herodotus†, that the paſſage from Troy to Pthia and Sparta could be performed in three days, and Ithaca was not much farther off. This circumſtance renders it perfectly incredible, that Ulyſſes and Menelaus ſhould have been long in finding their way home, as both were, according to Homer.

On the other hand, let us take a view of what (it is ſuppoſed) happened to ſome of the Trojans after the pretended capture and deſtruction of their town. Æneas ſailed with twenty ſhips, and a great number of people, to Italy, where he obtained a very good ſettlement indeed for himſelf and his followers. So did Antenor: and, what is ſtill more wonderful, Helenus goes and occupies a part of

* Il. ix. 663. † Lib. ii. c. 117.

of Greece, eſtabliſhing himſelf in Epirus. It certainly never was before heard of, that a conquered people ſent out colonies to take poſſeſſion of part of the country of its conquerors*. Which ever ſide of this queſtion be taken, it is clear, that no faith ought to be given to poetical hiſtory; and, indeed, it is abſurd to ſeek truth in the works of men, whoſe province is fiction.

I could offer many more circumſtances and conſiderations in ſupport of my propoſition, partly from Chryſoſtom, (whoſe excellent diſſertation I have by no means exhauſted,) and partly from what I have noted myſelf in the courſe of my reſearches on this queſtion; but were I to do ſo, this paper

* Such is the account given by Virgil, Dionyſius Halicarn. and others; and it is generally followed. But it muſt be obſerved, that Homer ſays nothing of Helenus's ſettlement in Epirus, or of Æneas's in Italy. On the contrary, he ſays, that Æneas and his deſcendants reigned over the Trojans. See Iliad, and Wood's Life of Homer. This, however, ſeems as little reconcileable to the Greek account of the capture of the city as the other.

per would ſwell to a treatiſe; beſides, I have ſaid enough, I imagine, to undeceive men as to this matter; at leaſt, enough to make them think upon it with attention and impartiality; which, if they do, I have no doubt that they will very ſoon undeceive themſelves*.

To

* Some glimmerings of the truth, as to the iſſue of the Greek expedition againſt Troy, ſeem to have penetrated all the clouds of miſrepreſentation with which Homer and other Greek authors have endeavoured to cover it.

Several ancient writers admit, that the Greeks were once repulſed from Aſia, and returned to Greece. See Pindar. Olymp. Ode ix.; and Benedictus' Commentary. Strabo lib. i. &c.

This miſcarriage was aſcribed to their landing at firſt (from a miſtake in geography) not in Troas, but in Myſia. The king of which country, it is ſaid, engaged and beat them. But that will not paſs. It cannot be believed, that of one hundred thouſand Greeks, not one had ever before made the ſhort voyage from Greece to Troas. But the matter does not reſt upon preſumption: Homer expreſsly ſays, that two of their chiefs, Menelaus and Ulyſſes, had been there on an embaſſy before the expedition; conſequently, they could not miſtake the way: beſides, ſuppoſing that they had gone wrong, why fight the king of Myſia, or why land at all? They muſt have learned their error from the firſt fiſherman or peaſant they met; after

To conclude: as it is a matter of indifference to us, now a-days, whether the Greeks or Trojans prevailed, there is no reaſon why the foregoing argument ſhould be read with diſlike or regret: on the contrary, it is the favourable ſide of the queſtion; for, if it leſſens Achilles, who had nothing but perſonal courage and ſtrength to recommend him, it exalts Hector, whom his enemies admitted to be the beſt and braveſt man of his nation; and, above all, it does juſtice to Helen, the fineſt woman of antiquity, by reſtoring to her that character of which poetic calumny has too long deprived her.

Fortunati ambo! ſi quid mea carmina poſſunt.

Æn. ix. 446.

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after which they had no more to do than to ſteer for the place of their deſtination. This is obſerved by Philoſtratus, p. 697.

FINIS.

ERRATA, VOL. II.

Page	line	
9.	l. 10.	(in ſome copies) *for* if they, or one of them, do, *read* if they do
15.	l. 22.	(ditto) *for* Gronegueu, *read* Groneweguen.
id.	note,	(ditto) *for* n. 19. *read* f. 19.
31.	l. 18.	*for* in civil actions, *read* into civil actions
67.	l. 15.	for *a fortiore*, read *a fortiori.*
76.	l. 4.	notes, *for* conſcious, *read* conſcios.
97.	l. 5.	*for* gave them, *read* gave him.
137.	l. 9.	*for* this lawgiver, *read* the lawgiver
139.	l. 8.	for *Pompeiun*, read *Pompeium.*
140.	l. 6.	*for* S. ii.—p. 32. *read* tom. ii.—p. 33. Ed. 1785.
150.	l. 11.	note, *for* cap. 3. *read* cap. 19.
160.	l. 8.	*for* friendly and hoſtile, *read* friendly, not hoſtile.
id.	l. 1.	note, *for* Manvillon, *read* Mauvillon.
164.	l. 11.	*for* ranks, *read* rank.
165.	l. 24.	*for* rather that, *read* but rather that
186.	l. 15.	*for* us too, *read* us to be too
188.	l. 10.	*for* Maivuel, *read* Manuel.
286.	l. 11.	*for* by what the Phenicians ſaid, *read* for example, what the Phenicians ſaid.
298.	l. 3.	for *perſtringebas*, read *perſtringebat.*
id.	l. 22.	*for* T. Chriſt. Sturmus, *read* Johan Chriſt. Sturmius
309.	l. 15.	*for* the air is, *read* that the air is

IN THE FRENCH QUOTATIONS.

150.	l. 6.	notes, *for* on l'appelle Angleterre, *read* on appelle l'Angleterre
152.	l. 4.	notes, *for* dun part, *read* dune part
160.	l. 5.	id. *for* pourrent, *read* pouront.
188.	l. 13.	*for* " enfant encore n'a que," *read* " enfant qui n'a encore que."
204.	l. 8.	*for* pareilles, *read* pareils
id.	l. 26.	*for* Elle doit, *read* elle etoit
205.	l. 4.	*for* muré, *read* mure
id.	l. 6.	notes, *for* ne ſont dont, *read* ne ſont donc
282.	l. 21.	*for* au faut, *read* en fait
286.	l. 21.	*for* je *read* jai
295.	l. 3.	*for* and, *read* &
300.	l. 2.	*for* influents, *read* influentes
314.	l. 8.	*for* hermie, *read* hermite.
322.	l. 3.	*for* de plus, *read* du plus
335.	l. 6.	*for* le vrai, *read* la vrai.
347.	l. 23.	*for* ne faſſe, *read* ſe faſſe

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